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ROYAL COMMISSION
ON
BROADCASTING

HEARINGS

HELD AT

OTTAWA, ONT.

OCTOBER 2, 1956

V-41

ROYAL COMMISSION ON BROADCASTING

Ottawa, Ontario,
Tuesday,
October 2, 1956.

PRESENT:

MR. ROBERT M. FOWLER	Chairman
MR. EDMUND TURCOTTE	Commissioner
MR. JAMES STEWART	Commissioner

MR. JOHN M. COYNE	}	Counsel
MR. A. J. de GRANDPRE		

MR. PAUL PELLETIER	Secretary
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FINAL SUBMISSIONS:

Canadian Labour Congress

Canadian Association of Radio and
Television Broadcasters

THE CHAIRMAN: Ladies and gentlemen, before we begin these final hearings and, incidentally, we are not too sure of the accoustics in this room, we tried to put in an amplifying system but if you find you are not able to hear either the questions or the witnesses' statements I wish you would find some way of indicating to us that that is so and we will try to get people to speak a little more loudly.

I think before I begin these final public hearings it might be worth while if I made a report on the position we have now reached. This week and next week we are to have further and final submissions from the first three organizations that appeared before us last April and May, namely, the Canadian Labour Congress, the Canadian Association of Radio and Television Broadcasters, and the Canadian Broadcasting Corporation. Incidentally, any written submissions made by these organizations have been made available to the three. These are intended to be rebuttal hearings namely to allow these three organizations to deal with any matters that may have arisen during the long public hearings over the last five months and which, naturally, they could not know about when they appeared. I sincerely hope the new submissions from these three organizations will not be merely repetitions of what was in the original briefs. As far as possible I suggest that they try to comment on any new evidence that has been placed before us

in all the public hearings throughout Canada. However, this is not a formal legal proceeding and we do not feel we should be too strict as to procedure. Undoubtedly, there will have to be some repetition if only for the sake of clarification and emphasis and to give a start-off to what is to be said now. As long as it does not go too far we won't feel inclined to raise any serious objection. Moreover, as I said when we adjourned a week ago, no one should feel they are bound by statements made several months ago. If opinions have changed in the light of expressions of public opinion since last Spring no one need feel any embarrassment in frankly saying so. We may ask questions to be sure we are correct in concluding a correct point of view but we will not blame anyone for changing their opinion in the light of so dynamic a subject such as broadcasting which is, apparently, of great personal importance to a great many Canadians. It would be strange if there were not considerable changes of opinion in discussions over a period of months. One of the, perhaps, incidental advantages of the kind of informal procedure and discussion we have adopted is that people have sincerely and with good will come forward to take advantage of the discussion and can in re-examination of their opinion, if necessary, change them.

Now, as for the three members of the Commission, as I stated at the beginning, we started

with no experience in the broadcasting business and with no preconceived ideas about it and certainly with no solutions in mind. We still have reached no conclusions, and we are aware of the complexity of the problems and of the inadequacy of our knowledge about them. However, it is probably true we do know somewhat more about radio and television in Canada than we did when we began our hearings on April 30th. We have been greatly helped by the mass of evidence and opinions presented to us from all the ten provinces of Canada, from a great many Canadians in all walks of life. I do not think it would be fair if we did not express our thanks and appreciation to everyone who has appeared before us and written to us and for all the help they have given us. Unfortunately, since there has been ^a somewhat diversity of opinion it seems unlikely in our report to be able to agree with everyone or, indeed, please everyone but I would like everyone to feel their opinions have been considered and their efforts are valuable. I think, with few exceptions, if any, the briefs have involved a great deal of work, a great deal of study and by and large they have been good briefs and we appreciate the effort and interest they represent. Now, these rebuttal hearings were arranged, as I have said, to give these three organizations a chance to summarize and finalize their views in the light of public debate. But there is

another purpose also. We wanted to be able to question these witnesses much more exhaustively and, perhaps, somewhat more intelligently than we could possibly do that day. I said then you should feel free to go into any matters concerning radio and television in Canada whether they were included in the early submissions of the organization or anyone else's. In other words, our questioning, both by counsel and Commission is questioning at large. We propose to do just that and I think we will have a good many questions, both by ourselves and by our counsel. I must, therefore, repeat what I have said so many time throughout our hearings in Canada, but I feel the explanation today would be more necessary than at any other time so the witnesses and press will understand our procedure. We will attempt to address searching and detailed questions to all witnesses at these final hearings but we can only question one witness at a time and therefore, we will quite deliberately put to each witness views which impose themselves from his submissions. We do so to test those submissions, to be sure he has considered the opposite point of view, to be certain we understand his full opinions and full recommendations. If anyone tries to read into this questioning of any single witness that a conclusion has been reached by the Commission I can only say he is making a mistake. We have

reached no conclusion yet and will not do so until these hearings are over and have had a number of private studies made by us.

Perhaps, I should say, a word about these additional studies -- additional to the public hearings; they come under three main points. First, we have done a good deal and will do more to study broadcasting systems in other countries. Last Spring I was in England and France on private business and I took the opportunity of being there to see officials of the BBC and the independent television authority in London and of Radio Diffusion in Paris. We also spent a day in June with the senior official of the BBC who came to Toronto to see us. Last Fall, I think it was, or March I had some talks with one of the large American broadcasting systems and two weeks from now we are going down for more discussions to Chicago and New York with United States broadcasting officials and others. While I think it is fairly clear that Canadian conditions and problems may be special to this country, we are trying to get whatever guidance we can from the experience of any other countries.

The second line of inquiry, apart from the hearings, has been an exhaustive programme analysis which is now under way in both Canadian radio and Canadian television and which is being made by an experienced and independent researcher.

So far we have had only the most preliminary report from this study but we expect it to be available for our report.

Thirdly, and this is of major importance, we have had a team of accountants under Mr. Guy Holt of P.S. Ross and Sons of Montreal. He has made a most exhaustive and detailed study of CBC financial problems and also a study of the financial position of the private broadcasters in Canada. Those studies of the private broadcasters are mainly based on their own reports to the Department of Transport. Those studies are nearly completed and they contain much beneficial material that we cannot properly discuss in detail in public hearings. However, the results of the study will enable us to deal with the all-important financing reference in our terms of reference.

After this opening long statement there is only one thing more to say and that is as to the mechanics of these final hearings. Generally speaking, we frequently sat for long hours because we were inclined to be a little too optimistic as to the speed we could strike and we did not wish to upset either our schedule or cause inconvenience to a number of people who have come some distance to present their briefs. I suspect these final sessions are going to be fairly strenuous and they should not be hurried. I am going to suggest we sit a more normal length of day for proceedings of this kind.

We will try to start at 10.30 in the morning, adjourn around 12.30 or 12.45, resume at 2.30 and try to adjourn somewhere between 4.30 and 5 in the afternoon and we will try to pick a convenient breaking point for any such adjournments. We will sit for four days this week, that is from Tuesday to Friday then break off for the Thanksgiving holiday, Monday, and resume next Tuesday and continue next week until we are finished. We do want everyone, and we also want for ourselves all the time we need to do the remaining part of the job without undue haste and as fairly as we can. At the end of the last session, a week ago yesterday, we filed a number of unrepresented briefs that had been sent in to us. There seem to be a few more coming in, not very many, and I think we will have to make a cut-off date sometime. We will probably put these briefs in at the end of the rebuttal hearings and that is the end of the final hearing. Mr. Secretary, I think if you will gather together the briefs that have come in, I think there are three or four --

MR. PELLETIER: There are five.

THE CHAIRMAN: We will put those in together and not in bits and pieces. That is all I have to say at the opening.

The first on the list is the supplementary submission of the Canadian Labour Congress and present are Mr. Jodoin and Mr. Wismer. We

have your black-covered submission and we will begin by marking it Exhibit 306.

---EXHIBIT NO. 306:

Supplementary submission
of the Canadian Labour Congress.

CANADIAN LABOUR CONGRESS

THE CHAIRMAN: Do you want to present it
Mr. Jodoin or will Mr. Wismer?

MR. JODOIN: Mr. Chairman, Commissioner Turcotte, Commissioner Stewart, first of all we wish to express our thanks for the opportunity of presenting before your Commission a supplementary submission. You said your initial statement this morning was overlong. I don't agree with you because it was most interesting. We appreciate the informal way and, may I say, the democratic way of the procedure of your Commission. As you know, the Canadian Labour Congress respects the opinions of others. No matter if, sometimes, in our estimation, those opinions are fantastic statements, but we will fight for the rights of others to make those statements even if it is not our opinion. Of course, we would like the privilege of answering any statement that might be made. You know Mr. Wismer who represents the Congress and he will be the one as he did before to continue the procedure as far as the

Canadian Labour Congress is concerned and I will ask him to submit to you, officially, our supplementary statements.

MR. WISMER: Mr. Chairman, I assume you wish me to summarize what we have said or how would you like me to do it?

THE CHAIRMAN: I would like you to take whatever time you require, we have read your brief but there are people here who have not and we want you to take whatever time you need for it.

MR. WISMER: Mr. Chairman, as we said in the opening paragraph of the brief, when we appeared before you in May, last, specific questions were raised by your Commission to which we gave replies. At the point at which, and I think it was Commissioner Stewart, we were asked for specific examples of the breaking of the regulations and at the time I was able to promise you that certain of our affiliated organizations would give you specific instances of these violations which we were referring to and, I think I am correct in saying, when you sat in Ottawa a few days ago three of our affiliated organizations appeared before you, that is the Canadian Council of Authors and Artists, the Association of Radio and Television Employees of Canada, and the National Association of Broadcast Employees and Technicians and during that period certain specific examples of the violation of broadcasting regulations were brought to your

attention and I think it was also indicated you would wish further information in that respect if it was available.

(Page 6765 follows)

Previous to that the American Federation of Musicians in presenting a brief in Toronto also indicated to you specific examples of the breaking of the regulations. We just hope that these examples cover the promise which we made to you and we are not particularly anxious to bring any further examples to you. We prefer to do it that way since the Congress is the parent body, the overall body, but it is the affiliated organizations who are working right in the broadcasting business and are primarily aware of these situations.

The other specific suggestion which you made, sir, was in respect to financing of public broadcasting in Canada. In our original submission we suggested that the only feasible way of financing the CBC as the dominant factor in the carrying out of broadcasting policy was through a parliamentary grant and you asked had we a counter-proposal. Naturally, no such thing could have been made at the time since our positions are determined by the membership through resolutions at conventions and the officers of the Congress with whom I work are bound by these convention decisions and we could not make any proposition or proposal to you which was at variance with those resolutions. However, we felt that we, or should we say sensed some reservations in the mind of the Commission in having this ^{const. body} august body completely dependent on grants from the governmental institutions in the country and we did explore very carefully all of this area with an open mind as to

whether some other way of achieving this purpose might be found. We have tried in this supplementary submission to set before you exactly what our thinking is. It just so happens that in looking at all the alternatives we cannot help but come to the same conclusion that we came to before. I might explain that in this way; it would appear that the alternative to parliamentary grants for the CBC would be a license fee of some sort, this is assuming that the CBC is to continue in the dominant position, that is, to continue to operate both in the fields of radio and television and maintain a national network facility as much as possible within Canada. We assume that because we feel, as we expressed to you before, that this was inherent in the Order in Council setting up your Commission. We believe, in the first place, that a license is inoperable in Canada and we think that not only because of the expressions of opinion that we have received from our affiliated membership in all parts of Canada but also from the experience which we all know from the days when we had a radio license.

The second point in this respect is really that in Canada a license on a national basis is impracticable in that there is just no way in which the Federal Government reaches all people or all households. We looked at this fairly carefully, we may be wrong but we think that no combination of departments in the Federal Government really reaches all people in Canada.

THE CHAIRMAN: In other words, we have nothing like the Post Office in England?

MR. WISMER: That is right.

THE CHAIRMAN: I should explain that: we all know that the Post Office is the accepted and recognized licensing agency for various kinds of licenses in England but I take it you are saying that in Canada dog licenses are municipal and motor car licenses are provincial and all other licenses are scattered all over the country and there is no Federal machinery for licensing. Is that the point?

MR. WISMER: Yes, perhaps I could say this that in Britain, I have not visited it for some time but basically the Crown is not divided as it is in Canada, there is one central government for all and each department reaches out, except for municipal purposes. However, in Canada we have divided up the work rightly or wrongly on the licensing bodies and they are essentially municipal and provincial. I think you have also stressed this, that while the Parliament of Canada operates for everybody in Canada the administrative machinery really does not reach everyone in Canada in the form in which it would be necessary to collect a license fee efficiently or effectively. I think in addition we suggested this, that we have seen various attempts, some successful and some perhaps not so successful, trying to make arrangements as between Federal authorities and the provincial authorities for some purpose but we discarded any suggestion of

that sort as being very impracticable. For instance, collecting a license fee and turning it over to the CBC.

THE CHAIRMAN: We have enough trouble already?

MR. WISMER: I think we would just multiply the difficulties. Those practical considerations we think are valid and we would also suggest to you in the brief that at this point the radio facilities are pretty much 100 per cent and the television facilities, on what information we have, apparently 80 per cent at least coverage in Canada that all this is now at the point where it is a national service and should be looked at in financing on a national basis rather than simply saying those who receive this service should pay for it. We feel that it is also valid in this connection that now we are not in the conditions of 1952, 1953 or 1954. In 1956 both radio and television facilities are such that just about all Canadians would be ready to make use of these facilities. This is a national service and should be looked at in that way in financing on a national basis.

We have made certain other minor points in the brief but before getting to those we have attempted by scanning or studying the briefs which have been presented to you to discover just about what the magnitude of the cost would be. We may be close but the studies which you have commissioned and which will be available to you will obviously

be much more accurate than anything we could do. However, we still believe that we are not too far out in what the overall magnitude of this financial problem is and we have tried to relate it to the overall economic situation in Canada. With that in view we have tried to also indicate to you the mechanism by which we could be sure that in financing the CBC and its operations from the public treasury that parliament would really be supreme in determining how this was done, how it was carried out and that any difference or difficulties which might arise from the attitudes of the government day, we could, as the Canadian public, be safeguarded from that and let the operation proceed. We are satisfied from the investigations which we made. After all, the overall suggestions of cost were not contained in the CBC's own submission to you in any detailed form but in sufficient form that we felt it would give a view of what it really amounted to. This was not available to us when we made our original submission to you but we are satisfied from all the investigations we have made that the actual financial problem here in relation to the overall economic situation in Canada is not as stagnant as some have led us to believe in the past. If we talk in terms of \$100 million, that sounds like a lot of money but \$100 million related to a \$30 billion gross national profit is a different story. Related to the situation in which only a

few people in Canada may have bought television sets, only a few people wanting to make use of that, as I understand the situation is in France, it could be a very difficult problem for your Commission to recommend ways and means of financing the national service but the facts of the case are that the Canadian public has been quite actively buying voluntarily receiving equipment for television. I have not got the latest figures but certainly it must be well over two million sets in operation in Canada today and any figures we see of sales in the financial papers and newspapers indicate a continuing selling trend.

(Page 6775 follows)

THE CHAIRMAN: I think the figure given to us by the Radio and Television Manufacturers Group was an investment of 750,000,000 receiving sets. We have had that evidence.

MR. WISMER: Well, I noticed the other day that the sales for manufacturers to dealers were a little bit down, but there was still a substantial volume, indicating a continuing demand by the individual family and the individual in Canada for this service. In this light, we are satisfied that we can afford as a nation what we want in television. We have put it this way to you because we are satisfied from watching the activities of your Commission and the submissions which have been made to it, of two things, first, that few people seem to have talked very much to you about financing, and perhaps we are brash in suggesting that we should talk to you about financing, but we have a very specific interest in talking to you about it, because our affiliated members work in this industry and their livelihoods are involved in whether or not this industry is financially sound and adequately sound.

We also think we see in the majority of the briefs presented to you, whether they may be critical or otherwise, that basically what the Canadians are looking for is more broadcasting service, not less. Many of the criticisms will be overcome, we think, if there were more broadcast time and variety of programming, and so on. In other words, we have got the millionaires' taste no matter what our income may be. We think at the same time, that to go to the Canadian viewing public, dealing with television only, the legal period of broadcasting might be twenty-four hours, with alternate programmes, and even some day colour television and such things as continuing increasing Canadian content in the programmes, are all feasible and that they are within

our financial capacity, as a nation.

THE CHAIRMAN: Just on that , within our financial capacity , you base that I take it, on an analysis of the total amount suggested or that may be involved against gross national profit figures?

MR. WISMER: Yes.

THE CHAIRMAN: You also translate that down to a cost per day per set?

MR. WISMER: Quite. Well, maybe I can put it this way. The figures which were contained in the Canadian Broadcasting Corporation brief submitted to you in May dealt with the subject on a formula which related the cost to television household. If I remember correctly, they defined a household as four Canadians and they also suggested that while there was really no policy, this was a rough yard-stick that they used to talk to the Government as to approximately where this thing would fit - in the early stages, up to about 75% coverage .

Now I assume that what they meant by that, was that the first stations, the first networks, would be in the more populous areas of Canada and the cost perhaps per unit would be a little lower at that point, than it would be as it stretched out from coast to coast and further to the North. They also indicate that if certain additions were made, so many dollars per household, starting from the 15-dollar mark, that may be a good yard-stick and we are not being critical of it, in an attempt to establish some basis to go ahead on, but we don't think such talking about television household means very much when you are trying to finance operations from now on.

We have tried to look at it from two points of view, first, the services which will be required in television

would normally increase as the number of viewers increases . That is, the bigger the audience, the more that audience will vary in its taste and demands, and the greater will be the demand for alternate programmes and variety of programmes, and, to the extent that the demand goes on, in the outlying regions of television, the greater the network costs that would be involved in getting it out there.

The other side of the story is to relate some legislation to television households, and this would be the type of thing where the ordinary draft of legislation would entail a lot of difficulties, and afterwards, there will be a lot of difficulty in interpretation. We have tried, therefore, to relate it to the set and perhaps even to the population itself, or some combination of these two things. It is perhaps just human nature that if you were to ask parliament to vote \$100,000,000 there might be a lot of objection, but if you were to ask for \$3 per person or \$3 for something else, it would be a different kind of money and more understandable.

We have suggested that if you relate it to the economic factors such as the brief states, or the set itself, the owned set, or to the numbers of the population, that this would be quite understandable. We think the average Canadian realizes he has to pay for the service, and also legislation of the type which Parliament passes and in which you have the automatic feature, such as so many dollars per person, to be paid into such and such accounts - then that process will have to go on, whether the Minister of Finance and his colleagues like it or not, or whether they like what the CBC is doing. Now in this democratic process, to change that, would require

an amendment to the legislation, and when legislation must be amended it has to go back to Parliament for amendment, where it is right back under the public gaze and where all the Canadians have a chance to have their representatives or the representatives of their committees, to go into these things specifically and to know whether or not the safeguards remain and whether or not the financing is adequate.

We have taken the position that not households but sets, at \$15.00 per set, would mean the minimum requirements were available, and apparently at \$30.00 per set all that we want is possible on the basis of the black and white and the networks and so on. It may necessarily run up to somewhere in the neighborhood of \$25.00 per set and another \$5.00 to bring it up to the neighbourhood of \$30.00 per set if and when colour television is demanded in Canada.

We have not said too much about colour television. We have tried to keep ourselves informed as to what is going on in the United States. Even up until yesterday, the information which we had was that the new prices and the new finances in the United States were having the effect of increasing sales of television sets and that a good deal of colour television time is now on the networks. Perhaps this is a growing thing. We would like to suggest to you that if it is a success in the United States, Canadians would be buying

these sets and will want the same sort of service and we will have to look at it as part of the financial problem. At some time in our discussion with you today we would like to discuss some implications of supplement 19 of the representations which are being made to you by the Canadian Association of Radio and Television Broadcasters as they relate directly to our submission.

THE CHAIRMAN: Well, as far as we are concerned you may do that now or later. At this point it may be as good a time as any, so that you may have a full and complete chance of answering any material we have, or which we know we have, and I think I should file for the record at this stage a letter which relates to information in your original brief of last spring, which was not presented as a formal brief and, therefore, it did not get into the supplementary filings a week ago. You will recall in your brief in early May you dealt at that time, and you do deal now in Paragraph 5 of your summary on Page 1 of the new submission, with the question of monopoly in a community, involving the ownership of a daily newspaper, television and radio facilities, -- where you say that this should not be allowed and where such monopoly now exists, it should be broken up.

You did make last spring a particular point of the situation in Peterboro, Ontario, and I think you were saying at that time that there was one newspaper, one radio, and one television station,

all under the same ownership. Also you stated during some later difficulties in the radio station the newspaper had failed to report the strike. I have a letter which was addressed to Mr. Peltier, the Secretary, from Mr. Robertson Davies, the Vice-President and Manager of the Peterboro Examiner, which I think I should read into the record. This will be Exhibit No. 307, and it reads as follows:

EXHIBIT 307: Letter from Mr. Robertson Davies, the Vice-President and Manager of the Peterboro Examiner:

"I would be very greatly obliged if you would bring the following facts to the attention of the members of the Royal Commission on Broadcasting.

In the Brief which was presented to the Royal Commission by the Canadian Congress of Labour on May 4th, the following passage occurs:-

"When the employees (members of NABET) of Radio Station CHEX in Peterborough, a part of the monopoly of Newspaper, Radio Station and Television Station now existing in Peterborough as noted above, decided to engage in a legal strike to gain a reasonable settlement in a dispute with the Radio station, the newspaper adopted a policy of not publishing news of the

strike, and continued this policy until it was publicly exposed."

This is a lie. In order that you may see what we published about this strike from February 18th, when it began, until March 29th, I am sending you sheets from the Examiner on which the news of the strike during that period is outlined in red. This comprises ten news stories altogether and two Letters to the Editor relating to the strike. Our labour reporter covered the strike faithfully and we would be happy to have any interested person question him as to whether he ever received any direction as to how this news should be treated. Before February 18th news was printed as it became available about the possibility of a strike; and in every way the Examiner has treated this strike as it would any labour dispute within its range.

The C.L.C. says that this charge is based upon "information we believe to be reliable." Nothing is so easy as to check what has appeared in a newspaper, and our files are open for inspection and are used by visitors to our office every day. It is plain that the C.L.C. made no serious attempt to check facts before making this accusation and it appears to me that this is an extremely irresponsible statement for a labour association claiming a million members to make.

My purpose in writing this letter, as you will readily understand, is to protect the name of this newspaper, which has acted in good faith throughout this strike. It is understandable, perhaps, that

the officials of the C.L.C. should not understand how a newspaper works, or what principles underlie the publication of a newspaper which has gained, and intends to hold, the trust of its readers. I have faith that the gentlemen of the Commission will take a more realistic view of the matter in the light of the evidence which I am sending to you. May I add that if, for any reason, members of the Commission are interested in questioning us further in this matter we will be happy to meet their wishes in any way."

Mr. Robertson Davies is enclosing a series of clippings, the first of which is marked as being in the Peterborough Examiner on the 18th of February, 1956, and headed "CHEX Employees go out on strike" with apparently a picture of the picket line. There is another item February 20th "No Move made to resume CHEX strike negotiations" and an article February 21st merely giving the dates, and another one on February 27th, March 8th, a small item on March 9th, and another one March 12th. March 9th again, March 17th and March 29th. I think that I do not need to file Mr. Peltier's acknowledgment which is attached to it, because it is not important. I am merely doing this, Mr. Wismer, so that you will know of the communication which the Commission has received and to invite your comments on it.

166E 6790 follows

MR. WISMER: In the appendix of the newspaper items, is that the editorial which he wrote on our brief right after we presented it?

THE CHAIRMAN: I don't think it is there. He was directing himself in this letter to the situation arising out of the strike.

MR. WISMER: I may say, Mr. Chairman, that I would be happier at the moment if one of the NABET people were here who were directly involved, but they happen to be holding their convention in Toronto. I was at their convention yesterday in Toronto. I might say--and I will be able to file this with you if you wish -- that the Globe and Mail, which I believe yesterday celebrated its 103rd birthday, and claims to be an accurate reporter of the news, sent its own reporter to Peterborough to investigate for its own purposes the failure of Mr. Robertson Davies' newspaper to report the strike, and the items appeared in the Globe and Mail -- I think on the front page. I could get you day and date, I think. As a matter of fact, we were holding a school in Peterborough and I was asked to go there, and at the banquet I made some references to the failure of the Examiner to report the strike. I was shown afterwards a report of it, which was very kind of them, but they also found some news which was many days old and succeeded in getting that printed -- because I made a point of this very thing that the monopoly effect was being shown in the reporting of the strike. I think when we appeared before you and discussed this that

I said I was going to pick Peterborough as one of the places where it was possible to get a newspaper from somewhere else easily -- and they do, from Toronto -- and it was possible to obtain radio programmes other than those on CHEX and also possible to receive TV programmes on a station other than CHEX-TV, but the effect on the reporting of local news could be what we said, which was that if the management was essentially the same, or the control was essentially the same in all three -- TV, newspaper and radio -- and something happened which they would rather not report, they could hide it.

THE CHAIRMAN: But I think you went further than that. The potential is obviously there, but I think you went further and said that not only could it happen but it did happen.

MR. WISMER: It did happen.

THE CHAIRMAN: On the basis of the information you received, and I am only quoting it to you as a result of the letter we had which at least seems to add chapter and verse to what they did, and if the date of the strike was February 18th, there is an item here of February 18th, and if, therefore, on the basis of information which you had you have made statements which do not appear to be correct, I will have to give you an opportunity to withdraw them if you think that is the right thing to do.

MR. WISMER: We don't wish to withdraw a thing. Is it possible for us to obtain a copy of that letter?

THE CHAIRMAN: Yes, we would be very glad

to let you have it.

MR. WISMER: We will give you these other facts.

THE CHAIRMAN: We have no interest in entering into any dispute which may exist between you and the Peterborough Examiner or between the Globe and Mail and the Peterborough Examiner. That is not our purpose. You did come to us and say that there was something wrong in having this kind of monopoly in radio, newspaper and television stations. You did say that not only was it a potential danger, but here was an example of an actual fact, and in order to weigh that potential danger it is important for us to see whether it did actually happen or whether it is a more remote thing. If you have further submissions to make, I don't think you need make them formally, but we would be glad to have from you any communication, which we will take into account.

MR. WISMER: We certainly will do that. We would not want you to be misled on that.

THE CHAIRMAN: This is just within our general principle of testing every possible statement that is made to us that is open for questioning and needs to be backed up with facts. If these facts are wrong we want to know that, and if they are right, we want to know that too.

MR. JODOIN: The Congress is interested in accuracy, sir, and we will clarify that.

THE CHAIRMAN: As to the matters which appear in Supplement 19 of the CARTB brief which you have mentioned, and which has not yet received an exhibit number, but will later this week, they do,

in fact, deal very specifically with your submissions, particularly the submission dated April 15th, 1956, and certainly I will be glad to have any comments on that. Now, because we cannot keep going back and forth from the CARTB to you and back again, this is your chance to comment on it in whatever way you see fit.

MR. WISMER: Thank you. Mr. Chairman, they raise their objection to our submission of April 15th, which was presented verbally in May, in twelve points. I think I am right in saying that nowhere in the CLC original brief did we mention the Canadian Association of Radio and Television Broadcasters, but we did refer to the private stations and to some private stations in certain instances, realizing the particular point we were making did not apply to all private stations. I don't wish to go into all of this, but in certain specific instances I think it would be perhaps useful to you if we let you have the facts as we know them. I am not bothering with point No. 1, but in point No. 2 it says the CLC and affiliated briefs do not accurately reflect the views of union membership. I may say to you that I was in this same position before the Massey Commission on behalf of the former Trades and Labour Congress of Canada. We quoted certain parts of that submission to you in our original brief in order to show the consistency with which organized labour had viewed broadcasting in Canada over the years. That brief was presented as a result of Convention decisions, and afterwards

confirmed by Convention decision, as accurately reflecting the overall view of the membership. In the intervening years between the Massey Commission and your own we have had the same policy reaffirmed in convention, and in the memoranda which have been presented annually to the Cabinet on behalf of the Trades and Labour Congress of Canada essentially that same position was restated to the Cabinet, to maintain the Canadian Broadcasting Corporation in its same position within the continuing broadcasting policy of Canada.

THE CHAIRMAN: Are these submissions to the Cabinet circulated among your membership?

MR. WISMER: That is correct, and they are reported to the next convention in the proceedings, and the convention has them, and has an opportunity of saying to the officers, "You have carried out the policy of this convention accurately" or, "You have not". These have been reaffirmed year after year. Essentially the same thing is true of the Canadian Congress of Labour. When we made our first submission to you we were still awaiting the convention at which the constitution was completed, but believing this would help, we appeared in the name of the Canadian Labour Congress to avoid confusion, and in that convention, as we have indicated to you here, the resolution which was passed by the convention, which is quoted on page 3 of the Supplementary Brief in its entirety, did not pass the convention unanimously. There were three or four people who took exception to it, but

there were 1,620 delegates, representing all parts of Canada and of our movement in all parts of Canada, who were completely in favour of it as a restatement and continuing statement of our view on the broadcasting policy.

THE CHAIRMAN: How many did you say were there?

MR. WISMER: There were three or four or five people who dissented out of over 1,620 delegates.

THE CHAIRMAN: It was the 1,620 figure that I didn't catch.

MR. WISMER: We have had commendation on our original position from all parts of our movement, and we are aware that a couple of submissions were made to you which were at variance with the group. This does not surprise us. When you are trying to reflect the opinion of policy of about one million people, after all, the convention resolutions are not unanimously passed; they pass as a majority. The delegates who are in the convention come out of the local unions, the local councils, the provincial federations, and they hold those positions because the membership feels confident that they will go to the convention and make wise decisions on their behalf. So, I think it is completely unreasonable to suggest that we do not accurately reflect the views of the union membership in this respect.

The third point says we are misrepresenting the aims of the CARTB. Well, we may be wrong. Maybe they have some aims that we know nothing about, but we feel that what we have attempted to do in our

brief is not misrepresent anything. We tried to say to you positively the type of broadcasting policy that Canada should have. I think it is only fair to state that years ago when Canada was attempting to formulate a broadcasting policy in radio that the position of the Trades and Labour Congress of Canada -- and at that time that was the only recognized congress in Canada -- the Canadian Congress of Labour was not formed until 1940 -- but at that time it is very clearly recorded in all of our literature and convention proceedings and official publications that what we asked for was complete public ownership; no private ownership at all in this field, and that position was taken in Parliament by all the leaders of the parties at the time the policy was actually adopted in 1932, and I think I quoted somewhere the feelings of the TLC at that time when that policy was adopted. But, various things have happened in Canada since, and the position of the private broadcaster has developed into, we think, some acceptable form. We have got to accept it provides a service and that he will submit himself to the overall regulations that make network broadcasting possible, that he is a useful unit in the system, and we have accepted that. We have not recommended to you or anyone the disappearance of the private station. What we have said is that we would like him to stay in that position because we believe to maintain the service it is necessary to have these east-west networks and that they are financially

otherwise impossible, because we have them under control of Parliament and operated by a Government agency -- the CBC. We cannot see how we misrepresented the position of someone else. Perhaps the reference is to some suggestions which we have made that the private broadcasters do not live up to the regulations at all times, or that they had not provided community service. I know one of our affiliates made quite a point of that before you, and so on, but I don't think it is fair to suggest that we have deliberately misrepresented the position of this Association.

We are just a little bit mystified by point No. 4, which says the CLC recommendations regarding foreign content of programmes and their identification work against the public interest. We cannot quite see what that is all about since it is quite part of our way of life that if something is made in Japan we mark it as where it is made, in normal commerce. You want things made in Canada marked "Made in Canada". We want to know the origin of these things, and we think it is only reasonable that although it may be one of the finest programmes you could see or hear, when we say that all we want to know is, was it produced in the United States or the United Kingdom or France. We cannot see how the identification of the programme is not in the public interest.

Point No. 5, we just dismiss as being completely irrelevant. It says, to be consistent the CLC should request the unions who play an important role in the presentation of broadcast music and

drama and in technical operation of broadcasting be regulated and controlled by CBC in the public interest. It is part of the law of Canada and of all provinces that unions shall not have the rights to come before boards if they are dominated by the employer. If we were to recommend this, we would be recommending the disappearance of all unions in broadcasting.

(Page 6810 follows)

Now, No. 6, it says the CLC recommendations regarding private networks are against the best interests of the unions in that it is depriving them of additional employers. This is a bit obscure. To our knowledge there aren't any private networks making applications in the country. We are not aware that applications have been made in relation to private networks. We are quite aware of the possible interest of the private networks, and in asking that those not be granted it is simply saying, we would like the Board of Governors of the CBC, while it has the power to grant a private network, not to do so. We feel that it is probably justifiable, from time to time, to set up some of these temporary subsidiary hookups, but the growth of the private network in Canada would produce a situation, eventually, that would not be conducive to the best public interest. It is far better the way it is.

Now, paragraph 7:

"A considerable section of the Labour movement in Canada is as favourable to the AF of L view which espouses private operation as it is to the views of the Canadian Labour Congress."

And then it goes on to say:

"For an indication of A.F. of L. views, see Annex 'A' to this document."

The annex is a page from the New York Times, Sunday,

July 8th, 1956. It is an advertisement which was presumably put in the paper and paid for by the New York State Association of Electrical Workers, A.F. of L. It does not say so here, but so your record will be accurate, that is the International Brotherhood of Electrical Workers, which is one of the big affiliates of the former American Federation of Labour and is now an affiliate of the American Federation of Labour and Congress of Industrial Organizations. It is signed by the president and by the secretary-treasurer.

The point I am making this is only a State portion of the whole union, and is not necessarily representative of the whole American Federation of Labour and Congress of Industrial Organizations, which represent only fifteen million people and all sorts of organizations throughout the United States. But more important still is that this deals with a special situation in the United States, the Niagara Public Power Bill introduced in the Senate by Senator Herbert H. Lehman of New York, and they take exception to his bill. They are not stating any particular case, but on an overall basis between public ownership or private ownership, and they have nothing to say in this advertisement about broadcasting.

THE CHAIRMAN: The heading is "Labour Fears Government Development of Niagara". I have not read the whole thing, but I take it they are opposed to this particular bill. Is that your point?

MR. WISMER: That is right.

THE CHAIRMAN: And not, apparently, stating anything on the question of espousing a private operation.

MR. WISMER: After all, on one side of the Niagara River you have a big private corporation developing the water sources and on the other side you have the Ontario Hydro Electric Power Commission developing the same source, with the continuing agreement between the two parties.

MR. JODOIN: May I add to that? The Canadian Labour Congress is an autonomous national labour centre. The Canadian membership to our affiliates decides through what I am pleased to call the parliament of labour, at its conventions, what representations are to be made to the authorities. Nationally speaking, to the federal authority or to the province through provincial authorities or through a municipal labour council at the municipal level, and decisions taken by this Congress are guided by decisions taken at our national convention. We did not say that the Canadian Association of Radio and Television Broadcasters did not represent our membership. There may be one member who did not agree. I don't believe they polled a million and fifty thousand members to see what the opinion was. We are governed by the decision arrived at in the convention like the Parliament of Canada is governed by the majority there. We presume that this Government represents the majority of the constituents, and we have

the same democratic form of representation. And while this notice, as I said a little while ago, may be fantastic for an organization such as this, we say to that, and I wish to underline this, the decisions in this case were governed by our membership, and I am sure the Canadian Association of Radio and Television Broadcasters are not governed by the CBC, the ABC or the Mutual Broadcasting Company. I will grant you that, and I certainly hope they will grant us the same principles.

MR. WISMER: I would like to point out I am reading from the first page where it is summarized. This particular point 7, when I read through the whole submission, I could not find where this point was shown, and I checked again and I find on page 7 that there is a point 7 discussed, but it is not the same thing. Page 7, point No. 7, reads this way:

"Another considerable divergence of opinion was presented to you in Vancouver by Mr. Home, representing the B. C. Federation of Labour, who, while endorsing the CLC brief, also quoted with approval the completely opposite view of the A. F. of L-CIO News, dated Saturday, May 5, 1956. (See page 1849 - Vancouver transcript.)"

The only reason I mention that Point 7 here (indicating) is that it is not the Point 7 here, and the particular reason for bringing that up is

to show the point of view of someone else for your consideration.

Point 8:

"On page 17 of its brief, the Canadian Labour Congress argued that: 'Radio and television newscasts are of special significance in Canada since no newspaper can or does provide national distribution. It is imperative, therefore, that national radio and television facilities be used to the best advantage in the gathering and distribution of news, especially national and international news. With the growth of Canada's international commitments, the interest in international developments has been increasing. Accuracy is, of course, of the greatest importance in this field, yet we in Canada have allowed ourselves to get into the position of relying almost exclusively on news gathering organizations outside of Canada. We think that this situation should be rectified, and that the CBC is in the best position to do this by undertaking its own news gathering abroad for both radio and television.'

I don't quite see the last phrase, how we get anything out of that, but I think I should refer you to where point 8 is dealt with, also on page 8, and they quote the exact words from our submission, and then say this:

"It is questionable whether Canada's international commitments would be safeguarded through the gathering of national and international news by a government agency, or whether Canadian listeners and viewers would want news screened through a Crown Corporation. Canadians deplore the tendency of Iron Curtain country governments rigidly to control what their people can see, hear or read. They would resent the setting up of a controlled broadcast press."

And so would we. But, I think, the facts of the situation might just be brought forth and that was the reason we made this recommendation. We believe we are correct that in the main the foreign news reaches this country from the Associated Press, from Reuters -- I am not sure whether we get anything from Havas, as we used to. Basically, Canadians don't go outside the country to obtain foreign news. If we still obtain news from Havas in France it is a government agency. If Havas has a room with the Associated Press in New York, as it used to have, we are getting it from the government there. While the Canadian

Press, with which we have not any fight or argument, relied on these external services in order to get news published in Canada, we feel a more on-the-spot job to get the news should be done. We think if it is useful to cover certain news at the Parliament of Canada it is just as important and useful they cover the United Nations, and they don't. It is the British Press or the United Press on which the CBC relies for its broadcasts, and we think, somehow or other, we should have more direct service than that, and we feel that is something the CBC could provide. As for this business of being controlled through a government agency, I think we should remind ourselves that the Canadian Press itself was made possible by a government subsidy, and that the newspapers themselves resisted any control of either government, and the subsidy was eventually discontinued because of the refusal to have any word from the government as to how news should be presented.

We have in our submission attempted to place exactly the same submission that the CBC be free to service the people of Canada in news as in all other things, and we don't think anything in our submission is said as to suggest that we are going to have some special fight for news just for Canadian consumption.

THE CHAIRMAN: Are you really saying that it is your contention you would like to have international news seen through Canadian eyes and interpreted for Canadians by Canadians?

MR. WISMER: Exactly.

THE CHAIRMAN: And you pick CBC to do it because they are already putting out a national news bulletin?

MR. WISMER: At this point, I think we have reached or are pretty close to it -- we have newspapers in Canada which rightly claim wide circulation and that they are national in scope, but, in fact, the only news which is really national in Canada is the CBC bulletin which really goes across the whole country. This is just a geographical fact in Canada, and we feel everyone wants the news and Canadians would like to have the news from abroad through the eyes of Canadians. And as far as the unions' position in the thing is concerned, we just cannot see why this sort of thing cannot be done just because the people who do the work are under collective agreement with the employer. After all, many people in the newspaper business work for their employer under a collective agreement, and there is no suggestion that that has changed the objectivity of the news.

Now, No. 9:

"On page 10, the Congress said, 'The way should never be opened for the creation of private networks. The private stations should, if possible, be even more closely integrated into the national and regional systems of the CBC. We suggest to you that this is very important, since our desire is to

see that the private stations be supplementary to the CBC and at no time be allowed to grow into powerful rivals of the CBC,"

made to play a minor role.

What we said to you, I think, is simply that we wanted to maintain the position in which it is . We were not going to relegate to it something new. This is the situation, and we would like to see no change in it. Put it the other way -- we do not want to see the private station elevated.

No. 10:

"On pages 14 and 15, the Canadian Labour Congress, dealing with licensing of private television stations in cities where there is already a CBC station, sets up impossible conditions. For example, one of the conditions they suggest is, 'The private station is able to provide as much live programming and employ as much Canadian talent as the CBC station, either by producing such programmes itself or by purchasing programmes at actual cost from the CBC.'"

Our submission is made with no thought of being against public interest.

(Page 6825 follows)

Then, No. 11:

"CLC's recognition that private stations are useful is inconsistent with CLC's support of outright nationalization and shows they are more interested in eliminating the private enterprise element from broadcasting than they are in the provision of a service to the public."

Well, now, that is just unrelated to the facts. We have never suggested any outright nationalization and we have not suggested any elimination of the private stations.

Then No. 12:

"CLC's charges of 'monopolies' in newspapers and broadcasting stations are unfounded; but if abuses occur under chain ownership or conspiracy between newspaper and broadcast publishers, legal recourse is available under existing legislation."

Well, we have been talking about that previously.

THE CHAIRMAN: Have you anything to say on the question about whether there is in fact legal recourse available under existing legislation?

MR. WISMER: I do not think there is by CBC; I think there may be some, but I am not a lawyer and perhaps there is some way under the present Combines Act or negotiation by some people with authority to do it; I am not sure we have any rights.

THE CHAIRMAN: I do not think that is the suggestion. I think the suggestion is that legal recourse is available under present legislation, and I think Mr. Coyne mentioned at one point that it would not be under the present Combines Act. I do not think you would have a chance to go into it.

MR. WISMER: I bow to the legal people present.

THE CHAIRMAN: Well, we will ask the CARTB what this legal recourse is.

MR. WISMER: That dealt with those main points, and perhaps I could just lay some facts before you in elaboration of this without labouring the point. On page 2 they indicate that they asked for an independent survey to check whether we represent the views of our membership, and it says:

"An independent survey among a representative sample of labour union members indicate that the views of rank and file union members differ widely from the views of Congress officers on the broadcasting subject."

Then, it gives some percentages, and at the top of page 3 it says:

"The same sampling of labour opinion showed great confusion. Some union members from the Congress wanted to take all broadcasting out of Government control and put it into private control. In short, the survey, taken by Gruneau Research Limited, is an

indication that while Congress may speak for Labour in labour matters, it does not truly represent the majority labour view on broadcasting. A copy of the pertinent portions of this Canadian Institute of Public Opinion Survey is attached as Annex 'B'."

Now, I checked this very carefully in Toronto, Mr. Chairman, yesterday, and I do not think the Commission should be misled in this. Gruneau Research Limited on Wellington Street in Toronto is a market research agency; the Canadian Institute of Public Opinion was a very specialized survey made from time to time in Canada for the newspaper people as an additional careful piece of work in addition to their market research work, and I do not think this survey made by Gruneau Research Limited should be given the high rank that would be given to what we like in the newspapers and what Canadians think about their Government, think about politics, and all sorts of things. I think the people who are engaged in this work in a technical way would assure you that a survey made of this type would not indicate public opinion at all. This survey is made with a small sample of 110 people in one city in Canada; it did not go to two or three or four cities, they went to exactly one and made a survey of 110 people. Now, I think we all could agree that that would be nothing like the type of survey or the results obtained from the Canadian Institute of Public Opinion polls. I

just wanted to say that to you.

On the other hand, having made this survey it would seem to me that they found out very little. I added up the figures on the radio survey and the important question they seemed to be asking is, whether people like the CBC programmes or private stations programmes. I might say there is no CBC station in Hamilton, so the people might be a little confused as to what was being asked, although, of course, they could get CBLT from Toronto. However, there is no CBC station in Hamilton. Fifty-two per cent found the CBC and the private station programmes either about the same or had no opinion at all. In other words, over half the sampling meant nothing as between a favoured programme on the CBC or a favoured programme privately produced. In television it is almost the same, it was 46 per cent; they had no opinion about it at all.

In regard to the questioning, I think the questioning in regard to whether you listen to the radio or television, how long you do it per week, have you a favourite programme, and if so, what is it, and then if so is it a CBC programme or is it a private station programme, and which do you prefer -- I think those questions seem to be fairly well established and give the person questioned an opportunity to answer objectively. In the questioning as to whether or not the CLC made any suggestions on broadcasting and that sort of thing, whether the CLC accomplished anything, these questions are loaded. It would

seem to me if you were going to find out objectively from 110 people in the City of Hamilton something about what has happened as a result of the creation of the Royal Commission on Broadcasting, I would think the first question to be asked would be, "Do you know there is an inquiry going on in Canada in regard to broadcasting?" I suppose some people would say that they did not know that; I would think another question to be asked would be, "Do you know who are making the investigation?" -- "Do you know of anyone making any submissions or suggestions to the Royal Commission?" -- "Do you know what the CBC itself has said; do you know what the CARTB who represent some of the private radio stations in Canada are saying; do you know what the Labour movement has said"? Then you could get down to the fact that some people are inquiring into this and some people have some views. As my president suggests to me, they might have asked these 110 people if they knew the Terms of Reference. It is not surprising you get a very confused set of answers to these questions.

THE CHAIRMAN: In any case, the questions are mainly on programming, are they not, rather than -- it is mainly a question of programme preference. Anyway, you had that 1,620 at your convention?

MR. WISMER: Yes, we did, and in the committee which was established to assist me in preparing these briefs there were not only people who appeared before you who are directly concerned in this business of broadcasting, but people from

our Federations and institutions throughout Canada, including people from the French-speaking parts of Canada, who gave their views as representatives of our people. We have to be a little more careful about the things suggested here.

THE CHAIRMAN: How many people were on your drafting committee?

MR. WISMER: The actual drafting committee was twenty-two or twenty-three people, and the brief was circulated in confidence throughout the whole of Canada to people to indicate who else were going to make submissions and asked, "Do you subscribe to all we have said, and if you do, then this is for your guidance."

COMMISSIONER STEWART: But it was not circulated to the overall membership, was it?

MR. WISMER: Oh, we could not do that.

COMMISSIONER STEWART: No, just to the delegates who were attending the convention?

MR. WISMER: Yes.

THE CHAIRMAN: It was circulated to the local union members of your organization?

MR. WISMER: Yes, that is right. The supreme body is the convention. There is a suggestion on page 3 of this brief indicating something which we think seems to be at variance with the truth; it is an opinion gained expressly from what the really experienced broadcasters of the CARTB -- it is at the bottom of page 3, and it says:

"In the opinion of the really experienced broadcasters in the CARTB a

separate regulatory body, far from destroying the CBC, would free it from the problems of regulating and licensing and enable it to devote full time, energy and resources for the conduct of their own broadcasting business, which would surely be benefited thereby."

Now, maybe I can be wrong, and all of our people could be wrong, but we do not believe the CBC does any licensing; the Department of Transport does the licensing, the Board of Governors recommends in its view whether or not a licence should be granted, but it is not the licensing body.

THE CHAIRMAN: I doubt if they are actually saying that; it seems to me they are saying that there are certain problems connected with licensing which are presently coming before the CBC, and we know that is a fact.

MR. WISMER: If that is what he means then that is all right. Then, it says:

"The CBC should retain choice
broadcasting channels."

Again this is the business of the Department of Transport.

"CBC would retain its public
subsidy."

Now, we are not aware that the CBC obtains any public subsidy any more than commissions and boards in Government. The CBC has to have money to operate, and that is taken from the public treasury, but it is not a subsidy. It says:

"Because of CBC's preoccupation with the complex jobs of operating, regulating and licensing, many valuable radio channels were lost to Canada;"

We are not aware of any loss of radio channels.

"and valuable television channels are now in danger of being lost to Canada."

We are not aware this great danger exists. I think if you check back, when they appeared before you in May they said there were all kinds of channels that you could set up all the private stations in Canada that you like, and it would not interfere with each other.

Then they make this statement:

"Had there been a separate regulatory board, engaged only in regulating and licensing, one of its main duties would have been to protect the interests of Canadian listeners and viewers in the wave lengths and channels in the international field. It would have obtained as many wave lengths and channels as possible, and encouraged Canadians to make the utmost use of these."

It is our understanding that is completely under the control of Parliament, and we have an international agreement in regard to this -- I think it is called the Havana Agreement -- and if Parliament is not bound to look after the people

of this country then we should get a new Parliament. It is not a question of whether it is the CBC or a separate regulatory body.

While we are on the subject, we have in no way changed our opinion that the regulations should be under the Board of Governors of the CBC. We have made a further suggestion to you to separate the actual regulating from the direct broadcast management of the CBC; we think that would be a good thing to do. However, we think we should stress that, and perhaps this is lost sight of in this argument which I am sure you have heard in all parts of Canada, about whether the CBC Board of Governors should be a regulating body or whether somebody else should be a regulating body.

(Page 6840 follows)

I am not talking to you about trying to make sure that the C.B.C. stations and the private radio stations and television stations should live up, at all times of the day, to the broadcasting regulations. I am not talking about the policing of the system but I think unless the C.B.C. board of governors do have the powers to regulate, that the network broadcasts would not be possible, and the networks maintained by the C.B.C. would only exist and function when needed, to the extent that the Board of Governors has the power to regulate both the C.B.C. and the private stations to form part of that network.

THE CHAIRMAN: Well, you apply that to the networks as we now have them -- it would of course be possible that the networks might have a complete change of C.B.C.'s stations across the country without the regulatory power. You are directing this to the situation that exists today where the network consists of some C.B.C. stations and some private stations.

MR. WISMER: Yes, that's correct, and I think I am right in suggesting that the act of parliament doesn't really make any difference between the two types of stations.

Now it is suggested in point 5 on page 5 that all through this brief there seems to be an effort, right from the beginning to the end, to cut off the people who are the leaders of unions in Canada from the United States, and I suppose that is an attempt at discrediting them.

It says in point 5 "the Congress leaders and leaders of affiliated unions appearing before you made a great point of their importance in the broadcasting industry, but fail to show how they are living up to their responsibilities and the power they possess. They do have tremendous power over the broadcasting of music, the transcription of it, and the acting of Canadian plays, in fact over all the things that we are trying to do in broadcasting, in developing Canadian talent and Canadian art and culture, yet they are not responsible to Parliament, to the C.B.C. or to the public, except under the ordinary laws of the land."

I am not too clear as to what they mean when they say that the unions in the broadcasting industry are not responsible to parliament. They are certified by the Canadian Labour relations Board which exists by virtue of The Industry Labour and Disputes Investigation Act, passed by the parliament of Canada and then that act, with regard to the crown corporations -- and the C.B.C. is a crown corporation, has special provision for the de-certification of these unions if they do not operate to the satisfaction of the crown in council. So that they hold a very special position under that legislation, and, if you like, are more responsible to parliament than those who are covered by this legislation and are dealing with strictly private

companies.

Then it refers here to Vancouver and deals with a Mr. Phillips of the Vancouver Symphony Society. Now I checked on this and I understand that Mr. Phillips is an Accountant and is the Manager of the Vancouver Symphony Society, and they quote him as saying that broadcasting symphony concerts increases public interest in symphonic music and increases the sale of tickets to symphony concerts. We are sure that that happens, but, when asked if he would like to have concerts broadcast on the Vancouver private stations he feared the reaction of the unions. He said "the ways of the unions are very mysterious". Well now, there is nothing mysterious about it. In the transcribing of musical programmes, if you have a symphony orchestra and you wish to transcribe it this is done with the transcribing companies under a trust agreement and, under that trust agreement, the position of the musicians is protected by agreement with the American Federation of Musicians. If in Vancouver, in that symphony orchestra anyone in charge of, or speaking on behalf of, those players were probably to make a special deal with Mr. Phillips, they would be asking on the one hand, their own organization to violate the trust agreement, and the transcribing company to violate the trust agreement. There is nothing mysterious about the thing. If you are going to transcribe it, then it is going to cost this much.

This is an international agreement.

I understand Mr. Phillips suggested to the people in the symphony in Vancouver that these broadcasts be played on the private stations and also suggested that a cinemascope be made of the orchestra playing and again, it is the same story. It is not a matter of whims or mysteries or anything of that sort. The members of the A.F. of M. in Vancouver are subject to the same rules and regulations as the members in Toronto or anywhere else. I might put it this way, if the 2,500 musicians in the City of Toronto were to go about playing in symphony orchestras and all sorts of other orchestras and if they wished to violate the trust agreement with the transcribing companies and with their own unions, they could break the market for transcribed material all over this continent and maybe elsewhere.

THE CHAIRMAN: I don't recall this too clearly, but I think when Mr. Phillips was before us, what he was saying was that he was broadcasting a good deal of orchestral music over the C.B.C. by an arrangement with them which presumably, was within the ordinary union agreement. When we asked him why some 25 or 30 extra concerts which he had produced were not sometimes carried on the private stations, he made the suggestion that that would involve the payment of costs.

MR. WISMER: Correct -- well, that is reasonable.

THE CHAIRMAN: He said the Vancouver Symphony Orchestra did not have the money. I tried to question the private stations in Vancouver on whether they had ever considered carrying ~~these~~ programmes, and in each case where presumably contractual rates would be paid by the private stations, I know one of them said he thought that this was perhaps a good idea, and that he was going to look into it. However, there is no prohibition by the union in Vancouver on the symphony orchestra making a deal with the private stations if they want to do so.

MR. WISMER: Oh no, of course not. They can make ~~it~~ provided they make it within the prohibition of the trust agreement. The information I have, and you can check this when you are talking with the C.B.C., is that the Vancouver Symphony Society receives \$15,000.00 for twelve concerts. Presumably this is remote control -- the cost that is within the trust agreement. Under the rules of the American Federation of Musicians and the agreement of the C.B.C. with the private stations, if you want to make a deal of that sort presumably you can make it, but it is certainly at variance with the suggestions made in this brief.

THE CHAIRMAN: I think he said that he was referring to the re-broadcasting or re-duplication, or something of that sort.

MR. COYNE: I don't recall it directly Mr. Chairman, but I think it was related to that sort of subject, however, we are getting a copy of the transcript.

MR. WISMER: It is also suggested at the bottom of page 6 that Mr. Pritchard of Local 247 of the Musicians Union in Victoria, says that his musicians in Victoria feel completely at variance with the position of the Canadian Labour Congress. The Musicians Union, which was desirous of making a representation to you, since they have a very special interest in a special type of operation within the broadcasting business, in which they are not employees but have made a contract for work, wrote to all their branches in Canada asking for suggestions in the formulation of their over-all brief which they wanted to make to you, as they did. However, this officer of the local in Victoria chose not to make any suggestions in his letter to the union members, but for some reason or other on his own, made the suggestions to you.

On page 9 dealing there with Section 10, on the suggestion as to how licensing may be carried out for private stations where a C.B.C. station already exists in a locality, it says "surely, if Congress believes that it required huge Government subsidies to enable the C.B.C. to encourage live Canadian talent, it is not reasonable to force the private broadcasters to employ an equal number in any given community, without the subsidies the Congress advocates as necessary to the C.B.C. and also without the network economies that the congress wishes denied to private stations."

Now going at this a bit backwards, I cannot

understand what they mean by networks economies. All of the information we have been able to acquire in both Canada and the United States, is that it is the network that costs the money -- that is the unprofitable portion of broadcasting. It is the station that makes the money.

THE CHAIRMAN: I think Mr. Wismer, what is meant there that as far as your programming costs are concerned you are able to spread the costs of the programme over several stations by way of network. I think that is the meaning here.

MR. WISMER: Well, that may be true.

THE CHAIRMAN: And in that sense it is economy in network production by spreading greater costs across a number of stations on the network.

MR. WISMER: Well, on that basis, the C.B.C., having the maximum network, ought to have the maximum economies.

THE CHAIRMAN: It still costs money, going through.

MR. WISMER: Oh it will cost money, but the private networks would not be likely to enjoy the same wonderful economies that the C.B.C. itself can enjoy, and it says "subsidies that Congress advocates as necessary to the C.B.C." Congress has never advocated a subsidy to the C.B.C. It has simply advocated a way of making money available to the C.B.C. for its operations, considering (a) that we want a public broadcasting system, and (b) that it has been well established that at the moment there is not sufficient commercial revenue to maintain a national T.V. network.

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We have not recommended that it requires huge government subsidies to enable CBC to encourage live Canadian talent. What has happened is that so far the advertiser has not been prepared to pay the full price of the production. That may look like a subsidy, but it is business, presumably, to obtain more people to use these facilities as advertisers. Probably eventually they will pay 100 per cent. Certainly there is no huge government subsidy in it, and neither have we recommended it. I might say this brief might, if published throughout our membership, encourage them to begin to return to their original view on broadcasting -- get these people out of it altogether; they don't think that way today, and we haven't suggested any such thing. I might say in this connection the financing of the CBC by Parliament might be eased if the CBC owned more of the profitable private stations and could obtain revenues that way to overcome the cost of maintaining network broadcasting. In so far as the CBC is supposed to be subsidized by the government, and private stations not, we suggested this to you in our original brief, and we suggested to you again, that perhaps the Board of Governors of the CBC might do a better job for Parliament if they would report to Parliament more of the activities of private stations. We recognize a private business should be confidential, but in many ways

the CBC provides what might be called -- and we don't call it that -- but what might be called subsidies for their operations, and it is not universal. It might be quite enlightening to Parliament to have more of the activities reported in the annual report of the CBC of the private stations along with the activities of the CBC's own stations.

Just as a matter of fact, on page 10 under Section 11, the second paragraph, it says:

"To support nationalization,
they quote Mr. Bennett ..."

-- that is correct, we did.

"... they quote Mr. Bennett, Mr.
Dunton ..."

-- so far as I know we have never quoted Mr. Dunton to you or anyone else. The person I think they are referring to is that we quoted Mr. St. Laurent in setting up the terms of reference of the Commission.

THE CHAIRMAN: Mr. Dunton is a perfectly good person to quote.

MR. WISMER: Well, we would be happy to quote him, but we would like a correction made in the brief. We like Mr. Dunton very much.

THE CHAIRMAN: Going back to page 9, item 10, which you have just left, where your suggestion was that the private station is licensed-- and I assume this refers mainly to private television

licenses?

MR. WISMER: Yes.

THE CHAIRMAN: "The private station is able to provide as much live programming and employ as much Canadian talent as the CBC station, either by producing such programmes itself or by purchasing programmes at actual cost from the CBC." If there are some economies in the sense of spreading programme costs over several stations, and suppose the present non-network formation was continued, would you feel that this particular statement might be a little too strong in that perhaps it would be better to put it that the private stations ought to provide some portion of live programming and provide some portion of Canadian talent in relation to its financial abilities?

MR. WISMER: I think we should try to be as clear as possible on this. There is no thought in our mind of trying to make it unreasonably difficult for private people in the Dominion of Canada to get into business and make a success of it, but where a CBC station already exists and where the CBC is itself able to average out costs, it should be pretty carefully considered before you let another station, a private station or even another CBC station, grow up in that community. There is only so much revenue there. It may easily interfere with the revenues which are now supporting the station which is already there, and from our point of view we think there

should be encouragement of live shows with Canadian talent. To the extent the CBC can face the cost of doing that, surely we don't want to nip that in the bud by saying, "Let someone else put his private television station in there". They argue on past that in regard to this same thing, these very rigid rules which we suggested to you. At the **top** of page 10 they say:

"This does not signify a responsible attitude towards the public interest, and might reasonably be interpreted as an indication that Labour leaders see in a single subsidized government system a more favourable opportunity for negotiating agreements, making Canadian radio and television broadcasting even more costly to Canadian listeners, and more profitable to themselves."

This is a weird and wonderful statement. I don't know, but we have never found in our experience that it is any easier to negotiate an agreement with a public corporation than it is with a private corporation. It is possible to reach agreement with both, but you have to go through the same process. Management in both instances seems to be just as careful with its pennies and policies, whether public or private. The suggestion here

is that in regard to labour unions in this field the only effect of their negotiations is to make the business more costly to Canadians. I suppose in the other direction, if you worked for nothing you would be getting the services very cheaply, but I wonder what else you could do in order to earn money.

MR. JODOIN: We agree that the supplementary submission of the Canadian Association of Radio and Television Broadcasters ... it is their right to do so, and we have no objection. We already have excellent relations with members of the association and, as stated very ably by Mr. Wismer, negotiations are the same everywhere whether public or private. There are still some members of the association who are not organized, but I am an optimist and I presume one of these days all the members of the CARTB will be unionized so that everybody will be on the same plane.

COMMISSIONER TURCOTTE: That paragraph at the top about it being more costly to Canadian listeners, isn't the implication there that the CBC being a public corporation is not in a position to resist as effectively demands made, or to sign contracts that are more acceptable, that a public corporation is not in a position to resist as effectively as a private corporation. They can always turn around and say, "Well, we will simply ask for more money and make both ends meet". The

private enterpriser is not in a position to do that, so he will probably drive --

MR. WISMER: I think that is what they are implying, and whatever they are trying to do there, they are not well informed on the facts. The idea that a public corporation is susceptible to union demands to a greater extent than a private company, I think, is pretty ably indicated in the railways where we have one public corporation, the CNR, and a completely private one, the CPR, and the results turn out to be the same in the negotiations. The question of whether you can obtain more from government than from a private corporation might be this, that for a long time organized labour, with which is affiliated a good number of people who work for the government of Canada and people who work in the provinces, and so on, we have been trying to convince the government of Canada to give us collective bargaining rights, and they won't -- perhaps because they think we might get more money. We find, and I think you will find in civil service organizations generally, it is just as difficult to negotiate an increase in wages or salaries, from the government or a government agency as from any private agency. We had this suggested to us by responsible people in government, that the private operator is in a position to grant increases more than is a government. The private concern makes profits and can see what its market is and can decide at any given time, and when

contract negotiations are on he can say, "Yes, we will pay another five or ten cents", whereas government has to go to Parliament for additional money, and in this framework they are greater resisters than is the private corporation.

COMMISSIONER TURCOTTE: On the other hand, is there an air of pressure of public opinion on CBC -- pressure on the CBC to be easier?

MR. WISMER: Well, in point of fact -- and you can ask the CBC management when they come before you -- but I am not aware that our affiliated organizations who negotiate with the CBC have ever asked the Congress or either of the Congresses before, to do anything publicly to support them in the negotiations, either by public demands, or to work on the CBC, or in any other form.

MR. JODOIN: It takes a lot of time to get a contract too. I know on one occasion it took a year to get the contract and nine months for a new one. So, I think they are generally on a par as far as these negotiations are concerned.

COMMISSIONER TURCOTTE: The CBC seems to be very highly organized all the way up to the top. Only a few executives are not members?

MR. WILCOX: That is not quite true.

MR. WISMER: Mr. Wilcox can answer that.

THE CHAIRMAN: Yes, Mr. Wilcox?

MR. WILCOX: Actually, there are a great number of people excluded from labour contracts in

the CBC beginning with Group II Clerks at the bottom of the scale who have access to confidential files, etc. That is one of our biggest complaints. People doing the same work essentially as people in a contract are excluded from any bargaining relationship. I would say probably of the 5,000 people in the CBC there must be at least 1,000 excluded -- not just executives.

COMMISSIONER TURCOTTE: At the very bottom?

MR. WILCOX: At the bottom and at the top, of course.

COMMISSIONER TURCOTTE: There would be much fewer at the top?

MR. WILCOX: I would not say that. All the producers are excluded. All the heads of departments, and people supervising four or five girls or four or five people in the department, and wherever they have the power of hiring and firing they are excluded from bargaining.

(Page 6870 follows)

COMMISSIONER TURCOTTE: How about those who have the power to recommend expenditures of money or expansion of service?

MR. WILCOX: They would be excluded from bargaining, not on that ground, but those people who have that amount of authority I would say in every instance would have authority in industrial relations over other people, I might say that the two contracts mentioned, the Union on which I am a member has two bargaining units in the CBC, one a very large one and one a very small one. We have signed two contracts, the first contract took over a year to get settled and it required conciliation procedure before it was settled. This Spring we signed another contract after nine months of negotiation and conciliation, that is the big one and the small unit was the same thing, we had to go to conciliation. I might also say that it is easier to bargain equitably with a group of workers from labour, it is much more difficult to bargain in a unit of 2,000 people scattered across the country than with people in one location. In point of fact, as Mr. Wismer suggested, there is a line in the labour law that says our certification can be withdrawn at the discretion of the Minister. This does not apply when we are bargaining with private companies, we can apply economic sanctions to a private company and force them to meet our demands. There is some question as to whether we can do it in a

Crown corporation. The responsibility is considerable.

MR. JODOIN: I think today they should be more organized, I certainly hope in all the broadcasting activities in Canada that those concerned are organized so what you say would be completely correct, I would agree with that, that should be the principle. It does not do any harm to the Canadian citizen.

THE CHAIRMAN: I think we will adjourn now until 2.30.

---The hearing adjourned at 1.50 o'clock p.m.

(Page 6875 follows)

---Upon resuming.

THE CHAIRMAN: Yes, Mr. Wismer, you were discussing Supplement 19 when we adjourned.

MR. WISMER: I think perhaps all I want to say is to draw your attention to the last paragraph which is a little difficult to describe:

"To sum up, we find the CLC and affiliated briefs supporting it, to be merely forthright advocacies of complete nationalization, unsupported by argument, unrepresentative of the views of membership, inconsiderate of the public interest while promoting Union interests. They misrepresent the legitimate requests of private broadcasters, make false charges of monopoly control by private interests while urging government monopoly in Union interests. Their criterion has been 'What is good for the Union leaders?' rather than 'What is best for the Canadian public?'"

I think we might sum up too, that we have not advocated complete nationalization and it is a matter of opinion whether we have supported our position by any argument. I tried this morning to indicate the extent to which we are representative

of the views of the membership. I think I might say that all people in the movement that I represent have to be elected, generally once a year and if you do not carry out the wishes of the membership it is possible that you would not be re-elected. The suggestion of being inconsiderate of the public interest, I suppose that is capable of having a very wide interpretation but to the extent that we do represent a very considerable sector of the public in Canada I think it could be said that we would not really, in considering their point of view and to the extent that this is quite a cross-section of people from one end of Canada to the other that perhaps we are considering quite a large segment of public interest. I do not think anywhere in the brief it could be suggested that we were promoting union interests as such unless it meant by that that we were asking you in your considerations to make it evident to the Government that in these operations there should be room for fair employment conditions. I do not think we misrepresent the requests of private broadcasters because I do not think we basically deal in our brief with any of their requests. We stated positive positions of our own with regard to the overall broadcast policy and the carrying of it out.

In regard to monopoly control of private interests as against Government monopoly and union

interests, to the extent that the evidence which we have produced in connection with the ownership of newspapers, radio and television outlets that we have been discussing, certainly we would be the last to suggest that the government was acting in our interests any more than anyone else. We have had many experiences with government so I think this summation is rather wide ^{and} of the mark.

THE CHAIRMAN: Mr. Wismer, before you leave this subject, you tell me whether the CLC has received any donations of network time from the CBC?

MR. WISMER: No. We have had, I think, reasonably fair treatment by the National Broadcasting System in the programming of matters on which we have an interest, industrial relations and things of that sort sometimes with management and labour both represented in the panel discussions. But, so far as I know there is no time when time was provided to us as such.

THE CHAIRMAN: You are talking then merely of your presence or the presence of some of your members on discussion panels that might take place from time to time. In another brief it deals with this matter, it is Supplement 16 which is to be submitted by the CARTB on page 26 in the section dealing with public opinion and it says:

"Generally, spokesmen who have appeared before the Commission fall into these major categories:

"(a) Those who favour a maximum degree of government intervention and control as a matter of basic principle in general, not just in broadcasting. These opposed our views and supported the present regulatory system.

(b) Those who want as a matter of principle the maximum degree of freedom and development for any citizen or business within the general law as well as in broadcasting only. These supported our views.

(c) Groups with a special or direct interest in the issues before the Royal Commission on Broadcasting such as this Association and the Canadian Broadcasting Corporation. Groups such as the Canadian Federation of Agriculture and the Canadian Labour Congress also fall into this category because of the generous donations of network time made them by the Canadian Broadcasting Corporation."

Now, I might say that I have inquired from the CBC as to whether there has been any donation of network time as suggested here and so far as I have been able to get the information, the CBC says that apart from participation in forum

discussions when they might attempt to get different points of view present, they have made no donations of time. I just wanted, since this is the last time we have you here, to know if you had any comments on that particular point.

MR. WISMER: Well, I was just trying to think back while you were speaking and I cannot recall any time -- well, certainly the CLC as such since the first of May certainly never made any such request and I cannot recall any time when either of the former Congresses ever made a request for the donation of time in which we would present a particular programme or point of view. I do not ever recall such time being offered. I do not think it is necessary to take the time but I could point out instances in which the CBC were very cooperative in arranging panel discussions or things of that sort to bring out the views of some subject and that was under their own arrangement. They might make use of our people but not as a donation of time.

COMMISSIONER STEWART: On those panels would the opposite point of view be represented too?

MR. WISMER: Oh, quite.

MR. WILCOX: It is in the nature of a panel discussion, getting a difference of opinion. Any programmes I am aware of, and I have been in the industry for some time, have been prepared by the CBC's talks and public affairs department without reference to the labour movement in the

preparation and individual members in speaking for the Congress or any individual unions have appeared from time to time but no time has ever been donated or asked for by any union or any congress to put on their own views.

THE CHAIRMAN: Well, we will ask the CARTB about that. Is there anything more now, Mr. Wismer?

MR. WISMER: I think on page 17 of our original supplement where we were talking under the general heading of radio and television programmes, I think we were in some respects commending the CBC and in other respects giving some constructive suggestions for changes. We did not anywhere in that ask for time for organized labour, the only specific suggestion I think we made was at the top of page 18 where we said we would like to see a programme on television which would dramatize and accent the life and activities of the industrial worker and his family in order to get across to the public what is the general life and living conditions of the industrial worker in Canada. It is just a matter of *presentation* presentation. I do not quite understand what is referred to in this position that we have been provided with network time, I just do not see what that is.

THE CHAIRMAN: What it seems to be saying is that your representations and the representations of the Federation of Agriculture

are to be discounted because you have had some favours from the CBC and I am simply asking you if you had such favours or whether you think you have.

MR. WISMER: Well, I would not want to say anything about the Federation of Agriculture, I think there is one very good programme on the air, the Farm Forum every day which is arranged in connection with the farmers.

THE CHAIRMAN: That is not a donation of time, that is a service to farmers.

MR. WISMER: That is right, and we have never asked for that particular type of service for working people.

THE CHAIRMAN: Anything more to add at this time?

MR. WISMER: No, I think that is all.

THE CHAIRMAN: Mr. Coyne, have you any questions? I have a few, not very many, I think we got most of them out as we went along.

MR. COYNE: I have a few questions on one or two specific points arising out of Mr. Wismer's supplementary brief.

(Page 6890 follows)

First of all, Mr. Wismer, on page 4, where you are dealing with the CBC's financial requirements. Away down in the page you refer again to your point 12.

"That the CBC's revenues should be provided by statutory grants, except for a small percentage which may be obtained from commercial sources but on which the CBC should not be forced to rely."

And you use the same language at another point where you are dealing with the same subject. What I would just like to ask you is, what do you have in mind when you use the words "small percentage"? At the present time, I believe, in the television surveys the commercial revenue probably amounts to about 30 per cent, that is just a guess, of the total CBC revenue. Is that a small percentage, or is it too large? In other words, are you making any specific recommendation as to the diminution or to the increase or as to the maintenance of the present level in commercial activities?

MR. WISMER: What we had in mind was something in the neighbourhood of \$6 million of commercial revenue and we thought that the total expense of the operation would be considerably greater than \$6 million. We were not making any recommendation that they go into or out of the commercial field. What we wanted to do was impress the Commissioners, first, with the idea in recommending the financing of the CBC's operations,

that they not think in terms of relying upon commercial revenue; that if, for any reason, the commercial revenue dropped off and for some reason or other -- policy reasons or economic reasons -- the system should continue to function on the basis of the overall financing system.

MR. COYNE: In other words, you are suggesting, for example, that the CBC should follow a commercial policy which would freeze their commercial revenue at \$6 million?

MR. WISMER: Oh, no.

MR. COYNE: Then on the other aspect of it, that the CBC should not be forced to rely on commercial revenues, I would presume, as they have commercial revenues, they rely on them for some portion of their programming. The fact that they can anticipate receiving \$6 million from commercial sources they can rely on that element of their income, or tentatively rely on it, to increase their programming over what it would be if they didn't have this \$6 million.

MR. WISMER: That is true, but in attempting to impress members of Parliament in order to finance the overall operations of the CBC, we feel it would be quite sound to say to members of Parliament the CBC, at the moment, have \$6 million from commercial sources, this may go higher with increasing economic activity, therefore, all we have to find from the public treasury is this much more. Our feeling is that Parliament should look at the overall needs of the CBC and recognize it

has an opportunity to get some commercial revenue to run its affairs, if it is an agency of the Government, they could rely on it at the moment but they should not be forced to rely on it exclusively or to any significant degree. Let us put it that way.

MR. COYNE: Is it your concept that there is some basic service that the CBC should be able to provide out of the public funds regardless of whether they get any commercial revenue or not?

MR. WISMER: Let me try to say it this way. If we have, as I think we have, accepted the present situation in which the CBC is the main part of the system, then we are accepting the private station as an important segment within that. If we say the CBC should be encouraged to rely more on commercial revenue, we are simply asking them to be a competitor, at least in that field, with the private station. If we wish the private station to go on operating and be a part of the public system, then Parliament has got to produce the lion's share of the money for the operation of that system.

THE CHAIRMAN: But if the present level is approximately \$6 million and if the television activities increase in scope, as presumably they are going to do, you have no opposition to the \$6 million rising somewhat if it can by proper commercial effects?

MR. WISMER: Oh, no.

MR. COYNE: Then turn to page 8. I would like to ask you a general question concerning the place of radio and your recommendation that

radio broadcasting should not only be maintained but extended in certain respects. I put it to you this way: if, for the sake of an example, I were to say to you that radio was filling the whole field of broadcasting services and was the only medium from which the public of Canada were deriving their broadcast services, but if on the other hand the situation had changed to the point where television is providing a major, and, apparently, a growing portion of that broadcast service, is there really any justification for conducting and providing as broad and extensive a service in radio at high public expense when its significance in the overall field has very much diminished?

MR. WISMER: I wonder if it has?

MR. COYNE: I am really just asking for your comments.

MR. WISMER: I think you cannot quite look at the radio broadcasting and television broadcasting in the same way as you look at the horse and buggy and the motor car as a means of transportation, and which outmodes the other and gradually the one disappears. I think these are two parts of one thing, and serve a purpose, even though, at the moment, it looks as though television were superseding radio. I think the average person will agree that while in many things the television set is to be desired over a radio set for the matter of evening entertainment, there is also a place in the home for the radio set. You don't have to sit right beside the radio in order to hear the programme.

You can move around the house and still hear what is going on. The value of radio is still there, and that being the case -- and I don't think many families threw away their radio sets when they bought their television sets. What we are talking about, don't let radio programmes deteriorate to the place where there is no particular reason for turning on that set. I think the average Canadian is quite capable of turning off a television set and turning on the radio set for programmes.

MR. COYNE: Granted that a continuation of a high level of radio is desirable, nonetheless, isn't it a different type of service than it is providing now? We have heard about the creation of a radio service for the daytime hours for the housewife, but isn't that a different level than the type of service provided when it was a significant broadcast in the evening hours in the living room of the home?

MR. WISMER: I think to some extent you have a point, perhaps in the evening radio is less used than television. On the other hand, we are only just getting used to television, and I think we are at the point where the television audience is becoming more selective. Many things are more pleasing as entertainment on radio than on television, and I think it is quite possible that the two media, the two parts of the same medium, will live side by side within the broadcasting system of Canada and be demanded as such.

MR. COYNE: If there was a necessity to

make a choice between, let us say, maintaining the radio service as it was before television, and thereby, perhaps, for economic reasons, limiting the development of your television, a choice between that situation and cutting your radio expenditures in half in order to permit greater development of television. What would you feel would be the proper choice?

MR. WISMER: Well, it is a little hard to answer that type of question. As of now, I think that choice isn't necessary. I think we can afford what we want in both. Of course, it is a matter of conjecture where we might be a few years from now, but basically, I think, the demand for radio services is still quite high. As a matter of fact, the sales of radio sets would indicate that they seem to be up well this year, while television sets sales are down, indicating a continuing demand for radio reception. And if you have a demand for radio reception, I think, in looking at the overall broadcasting system in Canada, it should be maintained at as good a level as possible.

MR. COYNE: In other words, we might put it this way. Despite the advent of television, it might well be that the current level of radio broadcasting or an increased level, is nevertheless justified.

MR. WISMER: That is all. As we have said to you in both briefs, I think, we would like to see, so far as the CBC is concerned, that it keeps two separate budgets and not use the money from one budget -- to try and keep the two operations

at least budgetwise, separate.

THE CHAIRMAN: It is an easy thing to say, but our financial studies seem to indicate an awful lot of expense goes into dividing the expenses. There is a common service across the two fields -- radio and television. An incurred charge is often very differently allocated in the two.

MR. WISMER: My only suggestion to you is to have enough money to look after both.

THE CHAIRMAN: May I put it in a slightly different way from Mr. Coyne. Looking at the standpoint of the justification of public expense, suppose, for the sake of argument, -- I have no doubt my figures are away off, but it will illustrate what I mean. Five years ago the whole service in radio was in order to provide fifty million listening hours. Probably more than that, but let us take that as an illustration. Supposing with the advent of television, ultimately, what they are providing is thirty million listening hours. Would you think that public expense on the same scale for radio would be justified in the thirty million case as it was in the fifty million case, and that it should still be maintained and strengthened? At another point on page 8 you talk about the same thing. Is there not a point at which, while it may not be a complete horse-and-buggy type of operation with its disappearing means of transportation, it is, nevertheless, relatively less important, and are we relatively less justified in spending so much money?

MR. WISMER: I don't think the argument can be settled as easily as that. I think the tendency throughout the whole economy, the tendency of demand -- and I am only saying tendency very carefully -- is to buy a better product even at a higher price. I will go back to the motor car. What the average man buys in 1956 in a motor car is a very different thing than what the average man bought even ten years ago, and he is prepared, apparently, to pay a higher unit price, a higher average unit price for a lot more in his motor car. Now, my feeling is, that this is the same in the broadcasting field. The actual demand is for a better service. That is the continuing thing. I think, if you are giving a service for fifty million hours, and if you are only going to give that service for thirty million hours, the increased selective demand may overtake that loss of the twenty million hours.

THE CHAIRMAN: What you are saying is even though the actual unit cost of the service, so to speak, is higher it still is something in your view the Canadian people want to buy?

MR. WISMER: They would like to buy.

MR. COYNE: Turning to your point about tariff protection, to which you refer on page 11, and which reference you made in your earlier brief -- I am really repeating here.

(Page 6905 follows)

Let me put it this way: I can see the point of having a tariff against something coming into the country, the importation of which is not regulated in any other way except by a tariff, but if you had, as you advocate in broadcasting, the situation where the programme content should be regulated by the CBC, which has the powers now to regulate programme content, what is the point of the tariff? The CBC, surely, in its programming decides either how much Canadian production they can afford to provide or else how much Canadian production the Canadian public would like to have. They also have regulatory powers under which they could to a considerable degree determine what the non-CBC stations would programme. When you have a regulatory structure of that kind what is the advantage of a tariff which might well add some costs, would certainly be an arbitrary device, if you like, and I suggest might well be completely unnecessary if programming is being regulated by a public body anyway?

MR. WISMER: Well, if it were to be suggested that the regulating body would be so specific in saying what particular preserved programmes might be carried on any station, whether it is a CBC station or a private station, or simply a local station or on a network, well and good, but we haven't done that.

MR. COYNE: Surely that is, then, a criticism of the regulatory body or a criticism

of their judgment as to what the programming over radio and television should be?

MR. WISMER: Well, it might be taken as that, but from the point of view of the people who are directly affected by this you may have -- take an orchestra: we are not talking about the importation of an artist; we are talking about the importation of commercial things. An orchestra may play somewhere in the United Kingdom, or anywhere and it may be a production which may involve an expenditure of \$10,000, \$15,000, \$20,000 or \$25,000, and it is preserved. You may be able to buy those discs in Canada for a rebroadcast on your station for less than \$10. From the standpoint of the cost of operation of the station and cost to the overall public in Canada who listen to that station, they may say, "That is wonderful. It gets us a very fine programme at a very low cost", but some people in Canada, similar to the people who produce that programme, are done out of not producing that particular programme, but out of an opportunity to perform and earn a living in this country. We are not asking that fantastic duties be placed upon the discs. That is not what we are talking about, but we would like to have -- you may suggest doing it by regulation, and that may be the simple way to do it -- but our suggestion is that if a tariff were placed on what it really costs to produce the programme that is recorded on that disc, then, the cost to the Canadian

listener is more realistic, and the ability of artists and others in Canada to make a living is increased.

THE CHAIRMAN: But, Mr. Wismer, if you are already by means of either control or by means of actual production of domestic programmes producing all that kind of programme that there is a budget for, then over and above that what possible advantage would it be to your members to make the cost of bringing in an orchestra from the United Kingdom on discs a very much more expensive importation than it is today? Because I assume that at the moment we have achieved a certain level of produced Canadian talent, and once you have got that in by way of regulation or actual operation -- the CBC in this case, or a private station -- how would a tariff benefit the situation there?

MR. WISMER: Well, Mr. Chairman, we are satisfied as of now that the CBC is perhaps producing all the shows that it can either for radio or television within its budgetary limits, but we haven't very much indication of the private stations doing this sort of thing, and yet we believe from various indications that they are quite profitable enterprises, and they are profitable because they haven't had to do much more than pick up preserved programmes, and we think that if they were required to pay

higher prices for their preserved programmes they would be inclined to find some people in Canada who may perform for them and gradually develop participation by our own people in the broadcasting industry in Canada.

THE CHAIRMAN: What you are really saying, then, is that under Section 21 of the Statute -- "The Corporation may make regulations to promote and ensure the greater use of Canadian talent by corporation and private stations..."

MR. WISMER: Yes.

THE CHAIRMAN: And you are saying they haven't done anything to ensure the greater use of Canadian talent by private stations within the financial ability of those private stations, as you believe it to be.

MR. WISMER: That is quite right.

THE CHAIRMAN: And since you can't get it that way, you would like to get it the other way?

MR. WISMER: To get it some way.

MR. COYNE: Just pursuing your former answer for the moment, if you force the private stations to pay more for imported programmes, whatever their proper position, doesn't that mean they will have less to spend on live Canadian programming than would be true if you merely regulated a particular level of imported programmes?

MR. WISMER: Well, so long as you give them free programmes, I suppose they won't bother.

THE CHAIRMAN: But on the other hand, Mr. Coyne, the answer to your question surely is

that if the tariff is high enough it becomes more advantageous to the private station to produce a domestic programme than to import. That would be the point of the tariff.

MR. WISMER: Yes, we have applied stiff tariffs before in order to get things going in Canada.

COMMISSIONER STEWART: Have you any idea whether there is a tariff set against us?

MR. WISMER: Yes, there is a tariff against us.

MR. WILCOX: I don't know what it is, but it is based on the programme content. Our present tariff is based on the celluloid or wax, but not on the programme content.

MR. COYNE: Just one other general topic I would like to raise on page 10 --

MR. WISMER: May I just say this?

MR. COYNE: Yes.

MR. WISMER: Many of the people involved in this brief are in organizations that have members in the United States and members in Canada, and it has been discussed in their organizations. This question of making it more expensive to import U.S. preserved programmes into Canada has no effect on the musician or artist or any of the people performing in the United States. It does not add to or subtract from his earnings. It does not add to or subtract, basically, from the recording people. It is just a matter of whether

or not by some device we could encourage more Canadian participation in the broadcasting business.

THE CHAIRMAN: That may be a proper concern for you, but I am not sure it is one for us.

MR. WISMER: I think it would be an awfully good thing. Section 21, I think, meant that.

MR. COYNE: Just going on to page 10 -- actually it starts on page 9, where you quote two paragraphs from your submission to the Gordon Commission, and it really is a very brief expose of Canadian national development and why we are a nation and that sort of thing, and towards the bottom of page 10 you are contrasting the United States and Canada, and you say:

"The difference lies in this:
private business in the larger U.S.
market can support television on a
national network basis while in the
smaller Canadian market private
business cannot. This is true in
radio; it is even more apparent in
television."

I take it from that reference that you regard that as being perhaps the broad, fundamental reason why public funds are in this broadcasting business in Canada, whereas public funds are not in the United States?

MR. WISMER: Basically, yes.

MR. COYNE: Then, in the last section --

MR. WISMER: What I mean by that, Mr. Coyne, is this: that I think people who perhaps don't always go along with public ownership do go along in Canada realizing it is necessary in many of these instances to marshal the resources of the whole country in order to have the service.

MR. COYNE: In your conclusion on page 12 you look into the future a bit and see the possibility that with the growth and development of Canada this situation may change and we may arrive, in your view, at a situation where private business might be able to support some sort of a national broadcasting system, but, nevertheless, you say that even in those circumstances you think that we should continue with our present policy. This is perhaps even more hypothetical than this Commission would be interested in spending time on, but what is your justification for saying that even if private enterprise could support this sort of structure, the government should, nonetheless, be financing it? Before you answer it, I point out I draw a distinction between "the financing of it" and "Canadian government control over a privately-operated system".

(Page 6920 follows)

MR. WISMER: Yes, I think I see what you mean.

MR. COYNE: In other words, I would pose this to you. If we are economically able to support broadcasting on a private basis, we might nevertheless continue to have some sort of control or regulation over that private system.

MR. WISMER: Well, I will see if I can put it this way to you. At the moment the market in Canada, being what it is, the advertiser apparently, or quite evidently I think, could not face the expenditures of television broadcasting to maintain this national network system.

We haven't seen the report of the Gordon Commission, but from what we have seen as to what responsible people in this country have said to that Commission, it would appear that most business, financial, and other people, believe that this country is going to expand, and that its overall economic ability is going to increase and probably, in a quarter of a century, we might have enough business in Canada to be able to support a national television broadcasting system, as well as whatever is useful and reasonable in radio.

Now the question is what should happen then.

Our position is that we should still have a Canadian Broadcasting System, completely under the control of parliament, and the C.B.C. should be the dominant agency in that, so that now the question is, and I think this is what you are asking, whether parliament should provide the money or should the C.B.C. be able to go out and obtain the money from

commercial sources to maintain it?

MR. COYNE: No, my point is really this - - let us give you parliamentary control and give you the concession that C.B.C. is the broadcasting regulative board if you like, controlling broadcasting in Canada, but if the national broadcasting service could be financed properly, why in those circumstances, should the C.B.C. continue to be an operator at public cost.

MR. WISMER: You had a very learned gentleman appearing before you not so long ago, talking about the inevitable pressures of big people on the smaller groups. We are probably not quite a small group in that we have this apparent opportunity to expand, very substantially, and perhaps therefore are not quite to be compared with many small peoples of the world, who have not got these opportunities, but still as we understand it, it is quite possible that as we expand our good friends to the South will also expand. As the population grows here it will grow there and the same pressure, by and large, will continue. What we fear, and I think there is some justification for this, not that we are objecting to the U.S.A. or anything of that sort -- many great and fine things have come to us from the United States -- but if we want to maintain Canada and a Canadian point of view and all that is involved in that, we must have East-West communication system, and it must be in such a form as to be effective, policy-wise, control-wise and operational-wise. What we fear is with the best will and intention in the world, the economic pressures will be such as to

send that into a north-south direction.

MR. COYNE: Then what you are saying in effect is that you would not grant the efficacy of regulation from anyone.

MR. WISMER: That's right. I want to be awfully clear though that we are not trying to suggest that just because people are in business in this country, they are not Canadian, and so on, but it is just that the economic pressure, it seems to us, will turn it into a north-south direction -- it would have that tendency.

THE CHAIRMAN: I have just one or two questions. One small point on page 11 of your last brief, about half way down, where you were talking about the consumer paying for everything, whether it is done by tax monies or whether it is done through hidden costs in advertising, you say that he must pay one or the other, if he wants television, and even more important in Canada, he will get far superior television service and programmes with Canadian content if he pays his government for it, the quality is higher and the cost is probably lower that way.

I think I could follow the argument, whether it is accepted or not is another question, as to the possibility at the moment of getting superior television services because of the economic factors and better quality and certainly higher Canadian content.

However, why do you say the cost is probably lower that way? Is that because you think that the cumulative effect of advertising charges is ultimately higher on the system than the direct cost, or is it some other reason?

MR. WISMER: Our thinking on that Mr. Chairman is this, that in the overall operation of the system of the C.B.C. being under compulsion if you like to produce a completely national system, it is necessary to look at it as averaging out the network and overall costs, regardless of whether you are going into highly populous areas or whether you are going into sparsely settled areas, -- to take for example Ontario as compared with the area all the way from Winnipeg to Vancouver.

Our feeling was that it would be reasonable to assume if the network had been set up privately, the tendency would be to give a lot of service in the populous areas where there is a relatively short distance involved and a big market, relatively, that the advertiser can reach, it would be a difficult thing to encourage them to use the expensive networks of the sparsely settled areas.

If you go out with a good administration and carefully handle operation, you could actually come out with a lower overall cost, but you would require, as I think the C.B.C. does require, the advertiser to make use of the entire network.

THE CHAIRMAN: Turning to another question, not really contained in your brief, we have had some suggestions that there are some restrictive features in labour contracts, so called, which add materially to costs, especially of the C.B.C., and as you know, costs and financing are part of our reference. We have not studied all the contracts as yet because they are rather complicated documents and we have had to read a lot of material lately, but I thought we ought to

invite your comments if any. The sort of thing I am thinking of is this -- there are maybe two or three things in fact. First, I cannot give you the exact reference but there is a certain requirement for standby professionals where an amateur may appear on a program, which obviously adds to the cost without any actual performance.

I understand the Labour Union point of view, but we are looking at this from a cost point of view.

Another type of thing is this, and this is something I have mentioned a number of times, as to the provision for extra payment to performers-- I think as high as 65% of the original payment -- when a programme is repeated. Now I can thoroughly understand the desire to be paid more for two performances than one of them, although the actual work done is the same. I have in mind a case where -- supposing you have a fairly elaborate and expensive production, let us say costing \$30,000.00 to produce, it may be good enough to attract an audience twice. Now it may be able to justify that cost if you could spread it over two hours at \$15,000.00 an hour, but if it cost \$50,000.00, which is what 65% would be at \$30,000.00, to show that twice, then one hour's cost would become \$25,000.00 and might not be justified.

So, therefore, I am putting it to you from the standpoint of the artists and performers themselves, where a programme of that kind might not be possible because of the economic factors. Would they not really be better off to have that programme produced and have

the cost spread in this way and, therefore, have a better programme, repeated twice, than to have the programme not produced at all.

The third one is the matter which I think has considerably changed since we started last April, and that is the problem of the export of programmes. I think the rate is now down to ten or fifteen per cent and the problem here, of course, is the very familiar one in Canada, which is the problem of the small market, and if you can expand your market as you have done with a great many other things, you lead to a chance of spreading your costs over a greater distribution and thereby justifying a better distribution.

Mr. Stewart mentions to me the increased employment in the process of that method of expanding our market for these goods. I am just raising these various points that have been put to us and I want to get any comments you care to make on them.

MR. WISMER: Well on the last one, a little over two years ago the economy was not running quite as rapidly as it is today and certain sectors of the economy were feeling rather unsatisfactory conditions. A Minister of the Crown made the suggestion that workers in the industry were pricing themselves out of the market. Well, whatever he thought justified that remark, he was never able to produce any figures to justify it.

It is one thing to suggest that the workers in this industry, whether they be artists or musicians or otherwise, should take less money in order to reach the export market, but from our point of view, it is a regressive step.

We have maintained our position in foreign markets for many things and to some extent improved this position, in spite of the increase in the standard of living in Canada, but whether or not that is possible in this industry is not for me to say. I am not an expert in that particular field, but I don't see the justification though, for asking the employees in this industry to subsidize the export market of the industry.

THE CHAIRMAN: Just before you leave that point Mr. Wismer, that is not subsidization, surely. Nobody is asking the performer to take less money than he is getting today and I am not asking you to take anything in this matter - nor am I trying to re-negotiate your labour contracts - but we are concerned about cost, and any ways and means that make it possible to improve the financial position of the CBC in particular, and there again, in other things, like the manufacture of newsprint, if you like, no one is asking that labour should not get the full rate. However, the worker doesn't get anything extra if the newsprint is exported -- he gets paid for his time. I am asking you why is it not fair that the performers should get paid for their time, and well paid for it, but that is it? Why should he be paid more for his time because it happens to be exported.

MR. WISMER: Well, is not the export argument insofar as extra payment for time, closely related to

your second point on second broadcasts?

THE CHAIRMAN: I think the two are very similar certainly.

MR. WISMER: Now the unions involved in negotiating agreements providing for a certain rate for one shot broadcasts and a percentage more for additional broadcasts so that they have the same rate, very gradually, where that second broadcast was going to take place abroad.

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Whether the figures are the right ones or the wrong ones is not for me to say, I am not negotiating contracts either but I think there is reason in their position that if they work, say, so many hours and put so much effort into a broadcast which is just to be seen once then that is the rate, ⁶ whatever it is, but if the employer is going to get double that out of it, it seems to me he should also be prepared to give something more to his employees. In other words, in the newspaper industry you can only sell the product once but in the broadcasting business, because of the ability to record either on tape or film, it is possible to sell the product more than once and if the product can be sold more than once then the employee involved certainly has some right to some additional remuneration from the additional sales.

COMMISSIONER STEWART: But does that not fall down when the fact of the matter is that the CBC are losing money on the thing? You say you cannot use your newsprint twice but should not we rather tie it into the motion picture industry where they are made and sold all over the world and yet the performers in those motion pictures are not paid for each time those pictures are shown no matter where it is?

MR. WISMER: No, but their original pay is based on the very thing you are saying.

COMMISSIONER STEWART: You base it on the profit of the man who produces that picture, now I am saying to you that the plays produced by CBC are a losing proposition to the CBC, they are not making money on them.

MR. WILCOX: I would say on this, if the CBC would pay the fee that the artists in the motion pictures are getting in certain instances I think you could get the same thing, that is the basis of argument too.

There is an analogy there about newspapers too but rather than use the newsprint and the artist's performance in an analogy for that basis, I suggest a columnist and an artist, a columnist who sells something to the Ottawa Citizen, let us say, expects to get a certain amount of money for that and if the Citizen is going to syndicate that across North America he expects to get a somewhat different rate.

THE CHAIRMAN: What you are saying then is that the remuneration to the artist should be somehow based or related to the circulation in terms of audience reached by the programme, is that correct?

MR. WILCOX: Yes, the negotiation of the original base rate is based on the existing situation and the terms are negotiated not on an arbitrary rate but in terms of the existing situation for a one-shot performance, what can we get for doing it once but if a man is doing

something that is going to go on once then circulate it around the country well, it is like an author selling a book and selling it to the publisher for \$1 an hour for writing time and saying, "I have no further interest in the product". Let us say he is a middle-class actor, if he ever wants to become an upper-class actor his popularity has to be shown in his income, it is the only way of rising in the profession.

THE CHAIRMAN: When you attempt to negotiate labour with private stations do you try to get the same rates as you have with the CBC?

MR. WILCOX: I have not negotiated a contract with private stations.

MR. JODOIN: I would say that the aim would be standardization.

THE CHAIRMAN: That is my whole point, if you know you are negotiating with a station that has a limited circulation market, obviously the circulation of, let us say, the London television station, I do not know whether you were there or not, but it has a very much smaller distribution than you would have if you were having an artist appearing on the CBC network programme. Therefore, in that particular case you are asking the private station to pay the rate to the performer which would be very much more per unit of listener than the CBC will pay for a unit per listener.

MR. WISMER: I think we are certainly clear when you say we are negotiating the same rate in

negotiating with the private stations, we are negotiating for quite a different group of people from the people who hold these contracts because these are authors and artists and musicians and people of that sort and their main market, definitely or indefinitely is the CBC. The people that we are normally dealing with, in negotiating with private stations, are technicians and operators and people of that sort because mainly that is what they employ and certainly the membership, those unions, are attempting to have established a standard rate of pay for the same sort of person who works for a private station.

THE CHAIRMAN: And this standard is not related to the size of the market?

MR. WISMER: Those are operators and technicians.

THE CHAIRMAN: We had Mr. Murdoch before us in Toronto from the musicians' union and unless I am completely mistaken he is trying to negotiate a standard rate of pay for a violinist and he is negotiating that rate irrespective of whether the programme goes to a small or to a large audience. Now, when we are in this situation, having regard to both export of programmes and rebroadcast or re-use of programmes, all those really are devices to expand the size of the market for the programme.

MR. WILCOX: It should be said that the wage that Mr. Murdoch would negotiate for a violinist would be a basic minimum rate; Heifetz gets a

different rate.

THE CHAIRMAN: Oh, of course, I am not suggesting there is a standard rate but I am suggesting the costs are determined for the small station in negotiating with musicians or attempting to be established is precisely the same rate as the musicians on the CBC network.

MR. WILCOX: The minimum rate.

THE CHAIRMAN: Yes, the minimum rate and in that case you do not apply the principle of the size of the market in the case of the replay or export, you do argue that the extra distribution should lead to an extra payment. I am not expressing an opinion, I am merely indicating to you that this may be an area in which some additional negotiation will be desirable in the interests of assisting the financial position of the broadcasting industry generally and also perhaps, and I think probably in the interests of providing more work for members of your various unions.

MR. WISMER: Well now, just a moment Mr. Chairman, I may have said this this morning but I repeat it here, there is quite a sizable group of musicians in the Toronto area, very capable musicians, capable of producing good symphony concerts, good string quartettes, good jazz bands and so on all down the line; now, if they decide some day to ignore the agreements they had and say to the CBC or one of the broadcasting stations there or some of the recording companies there that

they were prepared to record at a lower rate of pay and without the additional scales for replay there would be no doubt in the world a lot of musicians would find themselves in a very awkward position because the quality they would give out would be good and their whole framework would fall apart. Now, we as union people would have certain things but I think business people would be quite alarmed by this because it could create a chaotic condition in the transcribing market.

THE CHAIRMAN: Well, I do not question the validity of some order and regulation and agreement and so forth in this field, I am merely raising with you the question as to the suggestions made to us that there were restrictive features in labour agreements which might well be looked at, it would tend to increase costs and it might tend to lose employment.

MR. WISMER: Well, it takes two to make a bargain both with private and public employers. If in the actual experience it turned out and it became obvious to the membership of the unions involved that they were cutting themselves off from good employment under good conditions, I think they would be the first to suggest adjustments in the contract.

THE CHAIRMAN: Let us leave it there. I had one other point to raise with you and it relates to this matter of financing on the basis of either per person or per set. Now, this is

one point we have had several times and I cannot get my mind straight about it as to whether, if you have got your system fairly well developed this continues to be an accurate yardstick or not. The point I am really getting at is this, if you have 50,000 television sets in Ottawa today and by some wave of the hand you have 75,000 tomorrow, I do not believe that your costs and your spending would necessarily go up 50 per cent.

MR. WISMER: I do not think they would either, sir. But I think you have to have some reasonableness in looking at it in this way. The facts of the case are, the CBC is charged with getting going on television, whatever yardsticks were around, it was not something that could be so specific that they could say to the government, "This is what it is going to cost and this is how much we are going to need", but at least they were able to come up with what appeared from all sides to be a reasonable figure of \$15 per television household up to the time when 75 per cent coverage was reached. Now we have passed the 75 per cent and you will know now or soon better than we as to whether it is really possible as the facilities are extended beyond 90 per cent. It would appear to us that the network facilities would have a rising cost and as the number of set users increases it seems only reasonable to expect that there will be that much greater demand for variety and quality of service over the network. It may not be in the proportion

you mention, jumping from 50,000 to 75,000 and therefore jumping the cost from \$50,000 to \$75,000 but it will go up. The only way from our point of view to approach that is to, in some way, relate it to the increase in set usage. Now, what appears to be a satisfactory basis in 1956 may not look as good in 1961; better or worse, we do not know what the value of the dollar will be in 1961 and we do not know of the related prices and everything around that. We do not know exactly what the television demand is going to be in 1961. But, on the other hand, I think we know to provide these facilities, to plan to meet the demand involves something more than moving from year to year. Whoever is charged with doing this has got to feel that if they make the plans they are going to have the money to do it, therefore you have to have some formula which appears reasonable and is related to the demand for the operation and be set on a reasonably long-term basis, revived at some reasonable juncture, not by Royal Commission exactly but by responsible people who can take a look at this thing and say, "Do we provide more money than they really are needing or are we in the economic conditions of the times actually not giving enough?"

THE CHAIRMAN: I think I understood you were suggesting this was the best formula for doing it and I was raising the question about the formula itself. These are the facts as I have them and I

think they are accurate at the present time; about 47 per cent of Canadian households have a television set at the present time; slightly over 80 per cent of the households of Canada are within reach of the signals of television so that the increase in the number of sets, which is your yardstick, can go in two ways; one would be the filling up to some extent with American programmes to a fairly large extent and you get between 47 and 80. The other is the one you mentioned, the possible extension beyond the 80 per cent territorial coverage. I can see when you add territorial coverage the new sets may have a fairly close relationship to the increased costs but when you are adding from the 47 up to the 80 I see very little relationship between the increased number of sets and increased profits.

(Page 6950 follows)

MR. WISMER: Wouldn't it be fair to suggest as the number of sets moves from 47 per cent to the 80 per cent figure that the demand, and I think this has been presented to your Commission one way or another in all of its sittings in Canada, the demand for alternative programmes will become that much greater with the increased cost.

THE CHAIRMAN: As the sets increase -- certainly.

MR. WISMER: And I also think, and perhaps I suggested it this morning if, as it is now indicated, the new pricing and financing in coloured television is a success, that demand is going to appear in the broadcasting system of Canada.

THE CHAIRMAN: That is really what I am questioning and raising -- how you arrive at the costs that actually will come, or is there any other way of doing it? We are looking at various ways and we will have to see if we succeed.

MR. WISMER: I think the way the CBCs' accounts work, as I understand it, the money is in a separate account and if they need extra money they can borrow it, or get it from advertising, or if they have a surplus they can draw on the surplus. Now, whatever you gentlemen feel is a reasonable recommendation to the government to finance these operations should provide for the possibility of building such surpluses against such phases of

future demands. This seems to be, from our point of view, a better way of doing it than to put them in the penny-pinching position of having to go for loans.

THE CHAIRMAN: Thank you very much.

COMMISSIONER STEWART: There is only one question I would like to ask before Mr. Wismer leaves. Recommendation number 6 at the start of your summary is, I think, a reiteration of what was in your previous brief. That is, the breaking up of chains. I don't think any question was asked you at that time regarding your ideas but since we have heard from you in Ottawa we have heard others make this same plea but they have added to it the provision for the length of time that might be given before the break up took place. Have you any views on that?

MR. WISMER: Mr. Stewart, in our original submission --

COMMISSIONER STEWART: Unfortunately I haven't it.

MR. WISMER: I think I can give it to you verbally, but I just wanted to find it. It is the last paragraph of page 13 Mr. Stewart -- three years.

COMMISSIONER STEWART: Oh yes, three years.

MR. WISMER: We don't want to make any recommendation which would, in itself, create a situation that would destroy the capital assets.

It was rather trying to break the chain rather than try to break the station.

THE CHAIRMAN: Thank you.

MR. WISMER: May I just say a few things which are not in the brief and which I was asked by our people to say to you. I think some organizations have suggested to you that arrangements might be made for kinescope material for certain television broadcasts be made available for educational purposes. Within our family of unions there is a great deal of educational work going on among our own people and certainly this material could be very, very useful to us. Within our council of broadcasting unions we considered what should be the unions' arrangements with the CBC for this purpose and I was asked to say to you we would like this arrangement be made possible.

THE CHAIRMAN: Let me see if this goes as far. I think we had the suggestion there was a lot of extremely useful educational material on television which, if kept in kinescope form, might be used on some of the circuits of the National Film Board to reach areas not now within the reach of radio and television.

MR. WISMER: Purely within the educational framework.

THE CHAIRMAN: You are asking for this and you are sympathetically inclined towards it.

MR. WISMER: I would like you to know we are and to the extent that we do not have the

CBC audience this is going to cost us more money, but there is a broad financial outlook for this sort of thing.

The other thing, we would like to place our endorsement on the remarks made by, at least, one of our affiliates and maybe more in regard to the CBC's position in film making to the extent that any recommendation you should make in this matter that television being a tremendous user of this sort of thing the CBC should not be placed in a position where an outside organization might hold it up and they should have a free hand in the matter.

THE CHAIRMAN: Is there anything, Mr. Jodoin?

MR. JODOIN: No sir, except that we wish to thank you and your colleagues for the opportunity.

---A short recess.

(Page 6965 follows)

CANADIAN ASSOCIATION OF RADIO AND
TELEVISION BROADCASTERS

THE CHAIRMAN: The next rebuttal information we are to have is that of the Canadian Association of Radio and Television Broadcasters. Mr. Lynds, you have a number of associates with you: how do you wish to proceed?

MR. LYND: Mr. Chairman, you know Mr. Allard and Mr. Chandler from Vancouver. We have asked Mr. Chandler to come along to help with any technical problems that may arise. With Mr. Chandler is Mr. Gerald Lee, a consulting engineer. In addition we have Mr. Gordon Henderson, Q C., and Mr. W. Estey, who are going to present our case for us.

Before we begin, perhaps Mr. Allard might file with the Commission the various documents that we are presenting.

MR. ALLARD: The documents, Mr. Chairman, that have been filed with the Commission since those filed with our main brief earlier this year are, first of all, Supplement No. 13, a pamphlet entitled "Freedom of the Air" consisting of reprints from the Calgary Herald.

THE CHAIRMAN: Just a moment; I would like to be able to get these down and marked as you go along. Supplement No. 13 is a pamphlet . . .

MR. ALLARD: Of reprints from the Calgary Herald.

THE CHAIRMAN: That will be Exhibit No. 308.

---EXHIBIT NO. 308: Supplement No. 13.

MR. ALLARD: Supplement No. 13A, a pamphlet entitled "The Report on Radio".

THE CHAIRMAN: That will be Exhibit No. 309.

---EXHIBIT NO. 309: Supplement No. 13A.

MR. ALLARD: Supplement No. 14, a pamphlet entitled, "Control of Broadcasting."

THE CHAIRMAN: That will be Exhibit No. 310.

Is this a printed document? Oh, no, it is just a printed cover.

MR. ALLARD: Yes, sir.

---EXHIBIT NO. 310: Supplement No. 14.

MR. ALLARD: Supplement No. 15, a document entitled, "A Draft Act for a Canadian Telecommunications Board".

THE CHAIRMAN: That is Supplement No. 15?

MR. ALLARD: Yes, sir, No. 15.

THE CHAIRMAN: That is your draft Act?

MR. ALLARD: Entitled "A Draft Act for a Canadian Telecommunications Board".

THE CHAIRMAN: That will be Exhibit No. 311.

---EXHIBIT NO. 311: Supplement No. 15.

MR. ALLARD: Supplement No. 16, which is in essence the burden of our main rebuttal.

THE CHAIRMAN: That will be Exhibit No. 312.

---EXHIBIT NO. 312: Supplement No. 16.

MR. ALLARD: Supplement No. 17, entitled,

"Some Comments on the Canadian Broadcasting Memorandum to the Royal Commission."

THE CHAIRMAN: That will be Exhibit No.313.

---EXHIBIT NO. 313: Supplement No. 17.

MR. ALLARD: Supplement No. 18, entitled, "Some Comments on the Brief of the Canadian Radio and Television League".

THE CHAIRMAN: That will be Exhibit No.314.

---EXHIBIT NO. 314: Supplement No. 18.

MR. ALLARD: Supplement No. 19, entitled, "Some Comments on the Canadian Labour Congress Submissions".

THE CHAIRMAN: We have heard something of that before. That will be Exhibit No. 315.

---EXHIBIT NO. 315: Supplement No. 19.

MR. ALLARD: And Supplement No. 20, some general observations on submissions made to the Royal Commission.

THE CHAIRMAN: This is one we haven't had before, isn't it? This is the one that came in this morning?

MR. PELLETIER: Yes.

THE CHAIRMAN: That will be Exhibit No.316.

---EXHIBIT NO. 316: Supplement No. 20.

THE CHAIRMAN: Mr.Allard, can you give me any explanation as to how so much of this got out into the newspapers this morning?

MR. ALLARD: This morning, sir: we released advance copies of our briefs, as is the general custom, to the press, all of them marked, "Hold for a.m., Tuesday, October 2nd". We were, of course, at that time not in possession of an exact time when our submissions might begin, which was the reason that the "a.m.'s" went on, and I imagine that the people at the press who got the briefs took the "a.m.'s" quite willingly.

THE CHAIRMAN: You knew the practice that we adopted in the earlier hearings, that all these releases to the press were made by us with the release date as of the time of the presentation; why did you depart from that practice?

MR. ALLARD: As a matter of fact, Mr. Chairman, this was not a departure from our practice of making material available in advance to the press -- quite frequently at their request.

THE CHAIRMAN: You didn't do it last spring, did you?

MR. ALLARD: Yes, sir.

THE CHAIRMAN: Well, the point is, it was not this morning; it was last night it was released. It was on the air last night, I understand.

MR. ALLARD: Mr. Chairman, I was hoping you might bring that point up. We are not aware of how the releases that were made last night were made, and what must have happened there is that there was a misunderstanding at the release end. We take no responsibility, sir, for that.

THE CHAIRMAN: Well, I suppose it is not

of any great significance. I am probably unduly irritated by this display of bad manners, but, after all, you don't release a letter which you have sent before it is received by the person to whom it is addressed. However, the only question that concerns us is, what your real purpose is; is this a brief to the Commission or is it propaganda stuff?

MR. ALLARD: Well, I am not quite certain, sir, that I follow you completely. As far as I am aware there ~~was~~ no advance sent to the press of any material that had not previously been sent to the Commission.

THE CHAIRMAN: Well, it was sent before it was presented to the Commission.

MR. ALLARD: Yes, it was sent before it was presented here, but there was certainly no intention of bad manners. It is a policy of providing it in advance to the press.

THE CHAIRMAN: Well, I think we can leave it there.

How do you want to proceed, Mr. Lynds?

MR. LYND: I think Mr. Estey will begin our presentation, Mr. Chairman.

MR. ESTEY: Mr. Chairman, we realize in making this rebuttal that we come on the scene after a tremendous volume of material has been filed, and that in making the rebuttal we do not seek to aggravate the already extreme difficulty, I am sure, of the Commission, in analysing this information, but rather we come to present it in a way which we hope will remove any misunderstanding as to the

position this Association is taking on the issue of broadcasting. We propose to do that, rather than by laboriously wading our way through the material which the Commission already has, by dealing with our main rebuttal brief, which is No. 16, and use that as the main thread of our discussion. As we move through that there are matters which we consider should be amplified by actual fact. For that purpose we have with us a number of people who are specially qualified to deal with these matters of fact and questions which will no doubt flow from those matters. From time to time, therefore, with the permission of the Commission, we are calling these people, most of whom, of course, are members.

THE CHAIRMAN: Well, I would like to say, Mr. Estey, that at any time there is any question you wish to refer to them don't hesitate to do so. I realize you can't answer all the questions directly yourself, and that applies to Mr. Allard and Mr. Lynds, and anyone else, as far as that goes.

MR. ESTEY: Thank you, sir. Mr. Henderson and I take the view that while we have made a long and careful study of this matter, we are still lawyers, and there are a number of questions revolving around microvolts, in connection with which we shall call upon Mr. Chandler or Mr. Lee.

I refer the Commission to Supplement No. 16, and I am reading from page 1, wherein we set forth as our main theme in summary the following ---

THE CHAIRMAN: I don't want to keep interrupting, but I think what we will try to do,

except for purposes of clarification of wording and that sort of thing, is not to interrupt you as you go through this. Do you think that is the best way, Mr. Coyne?

MR. COYNE: Yes, I do, Mr. Chairman.

THE CHAIRMAN: In other words, it would be difficult for you, although it may mean some repetition.

MR. ESTEY: Whichever way the Commission desires. We are prepared for interruptions, and we promise not to use the age-old saying, "We will come to that later".

(Page 6972 follows)

Commencing with our summary of the main theme; this Association proposes in principle that the burden of providing broadcasting facilities to the nation should be largely shifted from the shoulders of the Canadian taxpayer to Canadian industry.

The recommendations of this Commission will determine the growth rate of Canada's broadcasting industry. They will affect the growth of the entire electronics industry, probably the most significant of the future. They must touch upon basic principles of justice. And because broadcasting is mass communication, those recommendations must also touch upon the future structure of our entire society. By recommending a sound and clear-cut structure of administration for Canadian broadcasting, this Commission will bring to an end the era of controversy, misunderstanding and repetitious, expensive investigations. It will open a new era of public confidence, of expansion and harmonious development, and reduce the burden on the taxpayer.

We believe that under present circumstances the State broadcasting agency is coursing toward a concentration of size, wealth and power significant enough to weaken the safeguards represented by elected governments. Briefs submitted to this Commission, which have recommended against a separate regulatory body, have in our submission, been predicated on the myth that the interest of the public and the interest of the CBC are

necessarily and always synonymous.

This Association believes that private broadcasting facilities are capable of providing a comprehensive broadcasting service and coverage to the nation, but because ^{of} the Commission's Terms of Reference, our submission is based on the assumption that a State broadcasting agency will continue to operate in some form.

We believe that the full development of a great Canadian electronics industry, a great Canadian broadcasting industry; that the protection of basic principles of natural justice can best be assured by:

(a) Establishment of a separate administrative authority for the administration and licensing of all telecommunications including broadcasting;

(b) Licensing of competitive television broadcasting stations in any area of Canada to permit maximum use of television channels, to encourage development of this art, to transfer a larger share of its costs from the taxpayers to industry;

(c) Financing of any State broadcasting agency whatever its form by annual parliamentary grants to protect the basic principles of responsible government.

Our proposals for the structure and Terms of Reference of the proposed separate administrative tribunal are set out in Supplement No. 15 to this Commission, "A Draft Act for a Canadian Telecommunications Board".

THE CHAIRMAN: Is that Exhibit No. 311?

MR. ESTEY: Yes, sir.

THE CHAIRMAN: May I just ask you there, is this the definitive proposal for the separate regulatory body that you are recommending?

MR. ESTEY: This, sir, was worked out with this thought in mind, that a great deal of generalities have been discussed here and we feel that it would be a contribution to give at least one example of how this structure could be brought into being by statute. We do not suggest that the powers therein set out are definitive of all those which should be set forth in such a statute.

THE CHAIRMAN: You do not?

MR. ESTEY: No, sir, because to propose that finality, what should go into a statute governing a field as large as broadcasting and as deep as the technology of broadcasting would require a study which is beyond the physical resources of this organization. When I say that is not our complete proposal I do not mean we do not wish to stand by it, but rather as we move along there will be things which are not in the formula, which are not covered because of the physical problem of adequately reducing it to statutory form.

THE CHAIRMAN: I did not mean to suggest that there may not be errors or some omissions that that you might turn if you are actually engaged in the process of legislation along this line, but so far as you are able to do it, this is your statement of what the CARTB means by a separate regulatory board; is that right?

MR. ESTEY: Yes, and this sets out, I should mention a little further in that direction, this goes a little further than is required. It covers the Broadcast Act and the Radio Act, and it deals with point-to-point communication, and so on, so there is more in here in broadcast than we needed to put in, but if we did not put it in someone would say, "Well, you have left the Radio Act up in the air."

THE CHAIRMAN: But so far as you say in this, if you say something ought to be black it ought to be black?

MR. ESTEY: That is right, sir. Now, the establishment of this board would:

(a) Correct the present situation in which the operating body has power to regulate its competitors.

(b) Apply to broadcasting basic principles of natural justice.

(c) Correct the present situation in which an operating body regulates and adjudicates on matters in which it has an interest of its own.

This board will have the duty of determining the public interest in all telecommunications matters, including both private and state broadcasting. Possession by the present State agency of operating functions gives it no greater ability to interpret the public interest and regulate private broadcasting than would be possessed by a disinterested administrative tribunal of the type proposed.

The statute constituting the board should charge it with promoting the fullest possible development of Canada's broadcasting potential, channels and resources in the public interest. Intensive development of such resources will best serve the interests of a growing Canada.

There would be right of appeal from such board to a court on matters of law and jurisdiction, to the Governor in Council on questions of fact.

Such a board can give continuity and flexibility to the administration of broadcasting, applying policies designed to serve the public interest in the light of changing circumstances. Experience in other fields, such as aeronautics and railways, indicates this will remove the need for continuing public investigation of the methods employed to regulate and administer these fields.

Then, as to the need for a Canadian telecommunications board. The present administration and licensing of telecommunications, including broadcasting in Canada, is divided between two government agencies, the Department of Transport and the Canadian Broadcasting Corporation, which reports through the Minister of National Revenue. The state broadcasting agency is itself divided into two parts, one regulatory, the other operating. This situation causes:

(a) Lack of clear responsibility for administration and policy;

(b) Weak representation of Canada's interests at international negotiations;

(c) A situation in which the Corporation is required simultaneously to operate broadcasting facilities and to regulate competitive facilities.

We realize the three conclusions I have just read are conclusions, and if they are not based on fact they are no more than statements, and I therefore wish to read to this Royal Commission a letter which we have received from a former member of the Department of Transport and which letter bears on point 'B', referring to Canada's representation in international negotiations. This letter is from J. William Bain, MBE, Professional Engineer, and it is written from St. Hilaire, Quebec, dated the 19th of September, 1956; the letter is to Mr. T. J. Allard, General Manager, Canadian Association of Radio and Television Broadcasters:

"In reply to your request for information with respect to certain facts in connection with the North American Regional Broadcasting Agreement of Havana, 1937, with particular reference to the power limitation of 5 kilowatts imposed by the agreement on certain Class II, Canadian privately owned stations, namely CKAC, Montreal, CFRB, Toronto, and CKLW, Windsor, I beg to advise that I was at that time a radio engineer in the Department of Transport and I attended the Havana Conference as a member of the official Canadian delegation appointed by the Government.

"The maximum power permitted to a Class II station by the general provisions of the Agreement is 50 Kilowatts and to this figure the Government delegation was satisfied to agree.

"However, the representative of the CBC, who was attending the Conference as an observer, brought so much pressure to bear upon the Chairman of our delegation, and this in my presence, that the latter, and to my personal knowledge, with considerable reluctance and against the advice of other members of the official delegation, agreed to the freezing of the power of the above mentioned stations at their then existing power of 5 kilowatts and they were so listed in the Appendix which forms an integral part of the Agreement signed at Havana.

"The matter of the limitation of the Class III stations to 1 kilowatt while the Agreement permitted 5 kw, is somewhat different as this limitation had been approved by the Minister prior to the Havana Conference and was confirmed at Havana at the request of the CBC.

"Yours very truly,

(signed) J. William Bain, MBE,
P. Eng."

(Page 6987 follows)

THE CHAIRMAN: Am I right in thinking the Havana conference was in 1937, Mr. Estey?

MR. ESTEY: Yes sir. Mr. Bayne wrote a further letter dated the 24th of September, 1956, apparently in clarification of one item in the letter I have just read:

"In reply to yours of the 21st instant requesting further details with reference to power limitation to one thousand watts for class 3 stations approved by the minister in 1936, I may say that the C.B.C. made no secret in Havana that this was done on their recommendation.

Department officials on the basis of public interest which it is their duty to serve, would not have made such a recommendation as it served no useful national purpose. I might further add to my knowledge, as head of the section of the Department of Transport charged with the technical administration of the Radio Act in respect of broadcasting stations from 1936 to 1949, never did the department recommend, nor did the Minister take on his own initiative, any restrictive measures to the detriment of private broadcasting stations.

The C.B.C. however, on several occasions, to my personal knowledge, has brought pressure to bear on the department or on the Minister in the adoption of measures which may have been in its own interest, but could hardly be said to have been in

the national interest. One more instance of this kind of action that comes to my mind is the forcing upon the department of the limitation of the power of providing frequency modulation stations to 250 watts.

Yours very truly,"

The nature and extent of this competition is set out below:

I might clarify what I did and say that we conclude with a reference to the regulation by the C.B.C. on facilities.

The Corporation is also required to define the public interest in matters where it has an interest of its own. The result is a confused situation and stultifying atmosphere which has retarded development to maximum potential of service possible for the Canadian telecommunications industry generally as well as that of broadcasting.

1. If CBC be in competition with private stations, it has an interest against its duty in its regulation of them and in adjudicating matters concerning them. This has been recognized in part by CBC in its brief to this Commission. It alleges there is no competition. This is recognition of the fact that its regulatory interests should not exist if competition does.

2. Competition exists between the State broadcasting organization and the private stations for the following:

- (a) audience;
- (b) frequencies;
- (c) business;
- (d) programmes;
- (e) personnel.

AUDIENCE COMPETITION

1. A broadcasting station's services are useless without audience. No person can listen to two stations or two programmes at the same time. Thus the Corporation is in direct competition with private stations for audience. This competition is not limited to stations existing in the same city. The Corporation's Toronto stations, for instance, compete for audience with private stations in Hamilton, St. Catharines, Brampton, and like centres. With its commercial programs, the Corporation must, and does, seek the same audience results as private stations. All stations, both Corporation and private, seek to serve all types of program needs, all types of audiences, at various times.

The CBC must always be interested in protecting its audience and perhaps expanding its facilities. For that reason it must in its operational capacity have a serious interest in any application to establish a new private broadcasting station or improve the power or facilities of an existing station. Citizens interested in establishing, expanding, or receiving broadcasting facilities are exposed to the danger that the interests of the CBC in its operational phase will conflict with its duties to the public in the administration of frequency allocation and utilization. There is, therefore, also competition in this field.

1. The only commodity which a broadcasting station has for sale to the advertising public is audience. Surveys indicate fairly accurately

the listening habits of any given audience. The advertising public knows what it is buying when it contracts for time on a station. Therefore the element of audience competition immediately creates competition between Corporation and private stations for business.

2. Competition occurs regularly at the national level. When a national advertiser contracts for network business on the CBC, its advertising budget is diverted from individual placements on private stations.

Now sir, if I may illustrate that conclusion with some factual statements, I have before me a letter dated the 25th of September, 1956, from a company in the advertising business representing radio broadcasting stations. As I understand it, I am at liberty to file this letter with the Commission but, for the purpose of reading it publicly, I will refrain from giving the name of the author.

THE CHAIRMAN: Why do you not say, not who he is but what he is?

MR. ESTEY: He is known in the trade as a sales representative for broadcasting stations.

THE CHAIRMAN: Is he an employee of a private station?

MR. ESTEY: No.

THE CHAIRMAN: Is he the employee of an advertising agency?

MR. ESTEY: And this is written on behalf of the agency.

THE CHAIRMAN: I see, you don't need to disclose the name but file the document if you wish.

MR. ESTEY: Thank you sir. The letter is dated the 25th of September and is addressed to Mr. T. J. Allard:

"In the light of your forthcoming meeting with the Fowler Commission at which time you will present a rebuttal to the CBC's brief, our stations are faced with a national commercial approach by the CBC which may result in a considerable loss in revenue.

It is our understanding that the CNC is starting a nighttime show called "Assignment" on its Dominion Network, due to start in the very near future. It will run for one hour nightly, Monday through Friday in reserve time.

The stations will not be paid for this show but are forced to carry it as a part of their agreement with the CBC. Eight spots will be available for sale. CBC plans to sell four spots nationally and will allow the stations to sell the other four spots either locally or nationally to create some revenue for the stations.

In my opinion, Jim, the logical purchaser for this type of show would be the large soap or food companies with national distribution who would buy the stations in any event, at card rates. The stations may very

well lose these accounts to the network rate and their only revenue will be from local sale at local card rate.

National advertisers paying the national card rate and going into a show of this type may well be forced by the size of the market, to drop their existing shows or features and take advantage of network discounts on market coverage.

Of course we have a selfish interest in that we are competing with the CBC for the advertiser's dollars, but at a rate which allows the station to pay a commission to the agency and to firms who represent them.

Network rates have no relationship as they are set arbitrarily and on a market basis could be lower than the local card.

I am given to understand that most stations are resisting this program or definitely do not like it. In one instance it kicks out Dave Price's programme "Sports Review" which many claim is the only good network show they receive.

This is, I feel, a personification of the claim of unfair competition by the regulator of the rules of operating and forces the stations to subsidize the CBC with a chance of a greater drop in revenue than most stations contemplate.

I feel that in view of the facts, the Commission should be made aware of this type of deal which can whittle away stations' national revenue.

Kind regards,

Sincerely "

I just read that letter sir to illustrate the point of competition. The letter I know uses the term "unfair competition". At this point in our submission we are not concerned with whether competition is fair or unfair or good or bad. At this point we are dealing with the fact of competition and the point which I just made is competition at the national level.

THE CHAIRMAN: I think we had better mark this letter as Exhibit No. 317. I don't want to interrupt you Mr. Estey, but we are beyond the hour for completion today and if this is a convenient place we will adjourn.

MR. ESTEY: Yes sir, this is a convenient time. Thank you.

HEARING ADJOURNED
at 4:45 p.m.
to be resumed 10:30 on the
3rd of October, 1956.

ROYAL COMMISSION

ON

BROADCASTING

HEARINGS

HELD AT

OTTAWA, ONT.

OCTOBER 3, 1956

V. 42

ROYAL COMMISSION ON BROADCASTING

Ottawa, Ontario,
Wednesday,
October 3, 1956.

PRESENT:

MR. ROBERT M. FOWLER	Chairman
MR. EDMUND TURCOTTE	Commissioner
MR. JAMES STEWART	Commissioner

- - - -

MR. JOHN M. COYNE	}	Counsel
MR. A. J. de GRANDPRE		

- - - -

MR. PAUL PELLETIER	Secretary
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FINAL SUBMISSIONS:

Canadian Association of Radio
and Television Broadcasters
(Continued)

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THE CHAIRMAN: Mr. Estey, before you start this morning, I would like to refer to some comments that I made yesterday on the subject of advanced circulation of certain of the briefs, and I thought then and still think, that there are certain fairly well recognized procedures in these matters which it appeared to us yesterday had been deliberately breached. After the adjournment I spoke to Mr. Allard and Mr. Lynds who told me that whatever took place was not intentional but was inadvertent. I have told them that we have completely accepted that statement and as far as we are concerned the incident is closed.

MR. ESTEY: Thank you sir.

THE CHAIRMAN: Now Mr. Estey whereabouts were you reading from, in Supplement No. 16.

MR. ESTEY: We left off reading at the end of Paragraph 2 on Page 5, sir, and it might be well to state at this juncture of the brief that we are establishing competition per se and not unfair competition. At this stage we have dealt with audience competition and frequency competition and we are now in the middle of an example of business competition.

I have read a letter from a person engaged in the broadcasting advertising business and, with that background, I now take up reading on paragraph 3 Page 5 of Supplement 16:

"Individual Corporation television stations are in direct competition with

individual private stations both radio and television for both national and local business. A national or a local advertiser placing business on the Corporation's television station in the Maritime area is reducing his appropriation for purchase of time on private radio and television stations in that area. An advertiser buying time on CBLT Toronto reduces the amount left in his advertising appropriation for purchase of time on privately-owned television stations elsewhere, or on radio broadcasting stations anywhere including the entire southwestern area of Ontario. The Corporation's radio station CJBC in Toronto is for all practical purposes a local commercial broadcasting enterprise, devoting the major proportion of its day (about 75%) to what is essentially local broadcasting."

We might point out sir at this point that there has been a great deal of discussion in previous submissions and filings of this association on the distinction between network and local advertising and the distinction between national and local advertising. I might say that we do not use the terms national advertising and network advertising synonymously. National advertising merely means advertising from one source, to cover the whole nation, by whatever means is chosen. It may be a series of related local

broadcasts with private national stations, or network advertising. The point we are making here is that corporations engaged in national advertising both as a network operation and as owners and operators of stations distributed about Canada -- and the reference to CJBC carries the discussion one step further and right into the field where we find private broadcasting, that is to say, local advertising on local stations as contrasted with the national basis. CJBC will be found to carry local advertising of the same character as private stations in the same area.

THE CHAIRMAN: Have you any figures at all as to the extent of their competition for local advertising?

MR. ESTEY: We have the amount first of all, of time devoted to network broadcasts by CJBC, which is about 25% of the schedule. I understand there is a slight distinction with respect to Sunday, but that is a rough average. We do not have any figures, although we have examples. To establish the figures we would have to monitor the stations and that would be rather difficult.

THE CHAIRMAN: Oh, I wasn't suggesting that. I was merely thinking that we could usually tell whether that 75% included sponsorship or sustaining programmes.

MR. ESTEY: One illustration sir, is that the CJBC at one time, fairly recently, and perhaps

today, carried advertising for Household Finance Corporation and in the course of the advertising gave the 19 or 22 addresses of the Toronto offices, which we consider to be an illustration of local advertising. Now, HFC is said to be a national institution but the advertising is not a national institutional business. It is, however, Toronto advertising which would normally be found on Toronto private stations, and other finance companies do use the private Toronto stations.

THE CHAIRMAN: No, no -- --

I was trying to get at the relative amounts of the 75% which were commercially sponsored local programmes and which were sustaining programmes. You have no figures?

MR. ESTEY: I wish I did have figures. All I can do is to invite the Commission to examine the corporation's records.

THE CHAIRMAN: We will have access to a lot of that information.

MR. ESTEY: "Another illustration of such competition is the fact that the Corporation's CBAF in Moncton, New Brunswick, actively solicits advertising in that city.

J. PROGRAMS

1. Individuals and companies not operating broadcasting stations produce programs which are made available for sale to stations either as "live" broadcasts or in the form of disc, tape or film. There is competition between the Corporation and private stations for the right to purchase such programs. There is competition between them also for the services of creative people either as employees or on

THE CHAIRMAN: Before you leave that Mr. Estey, have you any information as to the extent of individuals and companies now operating broadcasting stations who produce programmes that they have for sale. One of the things we have had mentioned to us is that there is relatively little programme production in Canada of a suitable sort for broadcasting purposes, available on a sort of enterprise basis. There may be the odd one but are there really many programme productions going on or are there not?

MR. LYND: Mr. Fowler, it is not necessarily Canadian programmes. There is Rin-Tin-Tin and a number of syndicated programmes that we are all trying to get.

THE CHAIRMAN: Yes. I see, but I was really directing the question towards the production of Canadian programmes for radio or television.

MR. ESTEY: That question requires a factual answer and I would like to, if I may, give you the answer perhaps after the noon hour adjournment.

THE CHAIRMAN: I don't think it is tremendously important but there is one point which has been frequently put to us, as to the importance of having competition in programme production, so that people are working together and getting themselves on the air with the programmes.

MR. ESTEY: I don't like the practice of giving the argument before the facts. However, on the question of providing the facts I am going to say that there would not be a good deal of that type of thing, for two reasons, one, unless the

programme can be syndicated on the simulated network there is not much sale, and two, unless it was on the network there is even less sale, and neither one is permitted.

THE CHAIRMAN: Well, when you know you can give us the facts.

MR. ESTEY: "There is also competition for purchase of rights to broadcast sports and special events."

And here sir, I would like to again emphasize that we don't think of this as unfair competition. I would like to refer to an example, for instance, the British Empire Games, where the corporation purchased the rights. I am not saying that they should not have purchased the rights, I am saying it is a fact that they did purchase the rights. The same way private enterprise purchases rights. We do point out though, that there is a drive here between the two groups to get those rights because they are vitally connected with audience appeal.

THE CHAIRMAN: Do you go one stage further and argue that there is competition, do you say that there ought to be competition?

MR. ESTEY: Oh yes -- that is the life blood of our argument. Not only should there be competition, but there should be a healthy atmosphere in which true competition can only exist.

THE CHAIRMAN: I understand.

MR. ESTEY: Now as to competition for personnel,

"K. PERSONNEL

1. The Corporation and private stations employ the same type of people - operators, announcers, and other types of transmitter, studio, and office help. There is obviously competition for such personnel. The Corporation's de facto network control means that such personnel after a certain point can increase their experience, financial incentives and sphere of opportunity only by entering the employ of the Corporation. Much of the Corporation's present personnel has thus been drawn from the ranks of private industry."

Now Mr. Chairman, I think perhaps at this point I will discontinue reading my part of this brief and let Mr. Henderson take over.

As to competition admitted, what we have to say here relates to the introduction of what the Honourable Mr. Justice Thorson has said, and Mr. Henderson will take over from here.

MR. HENDERSON: "The extent and importance of this competition has often been admitted by officers and officials of the State Broadcasting Agency."

I would like to make one interpolation here of a passage which will be found also in the 1942 Parliamentary Committee minutes of the then Mr. Brooke Claxton, who later became the Honourable Mr. Brooke Claxton, when he said the following -- if I may, I will quote from what he said in this regard:

"If the minutes" -- and I am speaking here of the minutes of the corporation - the CBC --
"If the minutes can be produced here they could easily be produced in parliament; and it is well known that the government has always taken the stand that parliament should not have either the minutes or details of particular transactions.

Just think of what it would mean from the point of view of competition. This corporation is broadcasting in Canada over a national network and on its own stations. Simultaneously there is broadcasting in Canada a very large number of private stations; and while in many ways they co-operate and their relations are exceedingly good, still it cannot be gainsaid that they do compete in many respects, and to permit the minutes to become available, is to make available to broadcasting stations every proceeding of the board without the corporation having the reciprocal right to have the minutes of the private broadcasting station.

That brings me to the analogy of the CNR. The CNR is in almost in the exact position of this corporation with regard to the parliament of Canada and the public of Canada and the privately owned railways operating in Canada.

It is well-known that before the railway committee and other committees of the house the minutes of the directors of the Canadian National Railways have not been asked for or if asked for, have been always refused."

In the same vein The Hon. J.T. Thorson said:

"May I mention one other point aside from the integrity of the Corporation and the autonomy of the Corporation, and that is the safeguarding of the position of the Canadian Broadcasting Corporation as against its competitors. I think it would be grossly unfair to the Canadian Broadcasting Corporation to disclose its deliberations to the public and make them known to competitors of the Corporation who may or may not be friendly to the Corporation. This country has seen a battle between public ownership of radio and private interests that are concerned with radio. Are we going to give the private interests an advantage over the publicly-owned Corporation by exposing to the private stations the deliberations of the publicly-owned Corporation? Do you think for a moment that the privately-owned stations would expose their minutes to the view of the Canadian Broadcasting Corporation? Then why put our Corporation in a disadvantageous position vis-a-vis its competitor?"

So that the recognition that there was, in fact, competition was used as a basis for the argument that the minutes of the Corporation be not revealed

to the private stations.

Page 35 of the minutes of the 1936 Parliamentary Broadcasting Committee reports part of an "extract from the Minutes of the 64th Meeting of the Commission held on Tuesday, May 1, 1934". The memorandum was signed by the Chairman and one other member of the three-man board of commissioners of the Canadian Radio Broadcasting Commission. The pertinent portion reads:

"I would like to call your attention to the fact that as the law stands at present the Broadcasting Commission is called upon to perform a dual function: (a) controlling and regulating radio broadcasting in Canada; (b) production and distribution of programmes throughout Canada. This means that the Commission is actively in the field in competition with private commercial stations insofar as the use of stations and time is concerned. The Commission is also in competition with private commercial stations to a very moderate extent in connection with commercial programmes over its own stations."

On June 28th, 1934, the Canadian Radio Broadcasting Committee's Minutes for 1936. The press statement reads:

"During the past few months there has been a good deal of discussion in the press and generally throughout the

"country with regard to the position of the broadcasting commission on the question of control and operation of radio in Canada. Very soon after coming into office the Commission found out that its position was a very difficult one in view of the fact that it was called upon to administer the regulations and at the same time to be in the business of producing and distributing radio programmes throughout the country. In view of this experience the Radio Broadcasting Commission has found it advisable this year to recommend that regulation and operation should be separated, that the Radio Commission should be left in charge of the regulation of broadcasting but that a corporation should be formed owned by the Commission to be responsible for the preparation and distribution of programmes throughout the country."

THE CHAIRMAN: The recommendation was not carried out.

MR. HENDERSON: That recommendation was not at that time, and it is our submission in what follows that it ought to be carried out and it ought to be a recommendation of the Commission sitting at

present, and the burden of our submissions at this point is that the position taken here was a sound one; the position that exists at the present time is not, and up to this point we have been stating what we believe to be the fact, that there is, in fact, competition. Up to this point we have merely been establishing what we believe to be realistic -- that realistically there is, in fact, competition. As Mr. Estey has said, we did not for the purpose of our submission consider it necessary or to be a question as to whether or not that competition is unfair. According to our brief, that is not necessary.

THE CHAIRMAN: You said a moment ago, Mr. Henderson, that you were urging in the balance of this part of the submission that this recommendation of 1934 should be carried out: are you quite suggesting that?

MR. HENDERSON: I didn't mean it in the precise terms of the recommendation. I mean a separate regulatory body.

THE CHAIRMAN: But your recommendation as contained in your draft act is quite different from this 1934 recommendation?

MR. HENDERSON: That is so, and I may say we are not wedded to the draft act. We believe in principle there should be a separate board. That board could take several forms because we have many precedents in Canada as to various types of boards that serve in particular fields in this country, and

each must be adapted to the particular circumstances of the industry, but in each case there is such a separate and independent body where all operators in competition report to or are responsible to. So that, up to this point we have in our submission established the fact of competition, which we say is sufficient.

Mr. Estey reminds me that in the 1946 Parliamentary Committee minutes at page 709 Mr. Frigon is reported as saying that they compete for listeners; there is no doubt about that, and if they do compete for listeners they do compete for commercial revenue. That is at page 709 in 1946.

The second arm, if I may interpolate here, to our submission is that they do, in fact, regulate. Not only do they, in fact, compete, but the CBC does, in fact, regulate, and I need only refer at this point to section 21 (6) of the Broadcasting Act where the Corporation suspends license. It is an order of the Corporation. A judicial hearing takes place, and the Corporation, following that hearing, orders a suspension. There is an appeal under 21 (7) to the Exchequer Court on points of law. So, it is abundantly clear in respect of that phase -- and I am limiting myself to that phase at the moment -- that they do have the power of life and death over a station for the suspension period. So, they do have power to order and regulate this particular penalty. They have the power to make the regulation, and later we will

show they have the power to interpret it, and they have the power to enforce it, and we submit that that situation is contrary to fundamental principles of natural justice. It is fundamentally wrong. Regardless of how or whether it has operated in the past, it is inherently wrong because of the potential dangers inherent in it. Incidental to that submission is that there is direction without effective appeal, and therefore there is compliance. Whether that compliance is in the public interest or not, there is, in fact, compliance, because there is no appeal to an independent tribunal to enable an unbiased -- I am using "unbiased" in the legal sense -- determination of the issue. In our submission the fact of competition establishes the existence of the bias, and bias either in their own favour or against them, they must lean either way -- they are human -- and in leaning either way it is not in the public interest. We are not complaining of competition. We are not suggesting there is unfair competition. We are suggesting that the structure has a built-in bias by its very nature and is inherently wrong. That is the burden of what follows. We are not criticizing individuals in respect of this; we are criticizing the structure.

This conflict contrary to natural justice: as we have seen above, the CBC is placed in the invidious position of having an interest against a duty. The interest being in the operating field as a competitor,

the duty in the regulatory field and the suspension field in respect of their regulatory power.

Any tribunal which is to decide an issue must not have any interest in the subject matter being decided under fundamental principles of natural justice. British jurisprudence from as far back as 1610 to the present day has zealously enforced the principle that a judicial, quasi-judicial or administrative tribunal in making its decision or determination must be free from any consideration of bias. It is not enough that justice be done. It is equally important that justice be seen to be done.

Otherwise we submit there is a lack of public confidence in the structure. There is a lack of confidence on the part of those affected by the structure, and then there is a compliance obediently without any effective right for partial determination.

Examples of the principle that a tribunal having an interest in a decision must not make the decision will serve to show how extensively the principle has become woven into the administrative and judicial fabric of our way of life.

These are just examples taken to show how long this principle has been recognized, and some examples to show its application. There are many more that could be chosen, but these have been chosen to illustrate the point that we have to make.

THE CHAIRMAN: Should there not be another word in that sentence? Don't all the examples require this principle, that a tribunal have a pecuniary interest?

MR. HENDERSON: No, no, definitely no. The interest may be either pecuniary or not.

THE CHAIRMAN: All the ones you quote are pecuniary -- or most of them.

MR. HENDERSON: Well I will give one more. I think it has been definitely held -- and I think one of the examples in here does indicate it need not be pecuniary -- and I think that case is the one of the General Medical Council versus Spackman, which was a case involving a doctor and the Medical Council passing judgment over a doctor. True in Dr. Bonham's case --

THE CHAIRMAN: So is Lord Cottenham.

MR. HENDERSON: Lord Cottenham had shares in a company, but the principle goes beyond that. Theoretically it ought to because bias is there, theoretically, whether it is a money interest or any other interest. The CBC cannot divest itself of consideration of the effect on its operations when it is making a decision in respect of the private broadcaster's rights which are being determined before them. The interest and duty are there -- the principle of it, regardless of the money interest.

THE CHAIRMAN: Let me test that against other things, which you and I know about. There is

a thing called the Law Society of Upper Canada, which has a discipline committee. You could make quite a case that the members of the discipline committee are competitors of the individual lawyers who are unfortunate enough to come before that committee. Yet, they sit in judgment.

MR. HENDERSON: They do?

THE CHAIRMAN: They determine whether that man can continue to practice law or not. They may disbar him, and they may have to go to the court for the necessary formal action in some cases, and argue there is some kind of right of appeal.

MR. HENDERSON: A very effective one.

THE CHAIRMAN: Yes, quite. You are talking now that in a situation where there is competition the competitor should not sit in judgment on the accused. How do you justify the integrity of the discipline committee of the Law Society?

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MR. HENDERSON: I would approach that two ways. I have no brief for that situation. I don't justify -- if the situation is that a competitor sits in judgment, I have no brief for that situation and I don't intend to justify it. The fact of the matter is, there is a very effective right of appeal. I have in mind a case that went to the Supreme Court of Canada not too long ago where the activities or actions of that committee were called into question.

THE CHAIRMAN: Your right of appeal is one point which is quite open for you to argue. But the right of appeal can fabricate one or two other matters which are not too easy ---

MR. HENDERSON: There are problems, but problems have been solved.

THE CHAIRMAN: But that is quite a different point. The point of the fact is that there is an element in competition -- a broad element of competition in the case you have mentioned, but the same thing applies to medical societies, to a great many professional societies, of one sort or another, right through our whole system. It is not something that we have, as you put it, uniformly and rigidly and exclusively set out as a lone, lorn example.

MR. HENDERSON: No, there are others. I have in mind one where the Canadian Bar Association took exception to this last week, where the Department of Transport is judge and jury in respect of licensing of aircraft. There again, the fundamental principles are called into question. I think the principle is sound. It may be we have

lost sight of the principle and perhaps we have lost sight of the example you have given but that does not mean the principle is not sound.

THE CHAIRMAN: I think you were saying this is a fairly uniform, unimpeachable series of authorities which were all one way. I am just suggesting there are examples of both ways.

MR. HENDERSON: There are examples. This is an example. I am not saying it cannot be done because the Legislature can effectively do it if it chooses, but in doing it, I submit, it is overlooking fundamentals. The whittling away of our principles, that is something that ought not to be encouraged. If you can give examples of where that whittling has been done, I would suggest we move in the other direction for those traditions are still sound.

THE CHAIRMAN: You might say the Legislature in establishing and empowering the Law Society of Upper Canada is also whittling away fundamental rights, and it is a pretty difficult situation for you to take.

MR. HENDERSON: There are two things -- or one thing, perhaps, in the Law Society of Upper Canada, I have, at least, a right to elect the person who is going to decide.

THE CHAIRMAN: So you have in the Board of Governors in an indirect way; you have a right to elect the governor who is appointed.

MR. HENDERSON: A very much more indirect way than I have in connection with the benchers of the Law Society. I have a direct vote as to who

can be a benchner. I have a much less direct vote as far as a member of the Board of the CBC and I am a member of the organization. I have some say in respect of that, in respect of who composes that group and I don't have that say here in the same sense.

THE CHAIRMAN: You have some say now, very indirectly ---

MR. HENDERSON: But realistically, much more remote. I cannot effectively make my voice heard in respect of individual members of the CBC, that is, members of the Board, effectively do it -- I am a voice crying in the wilderness. The issues are so much broader that the voice is lost in the multitude.

THE CHAIRMAN: Oh, come, Mr. Henderson. The members of Parliament whom you help to elect very effectively raise their voices about a whole host of things about the CBC that come up every day in Parliament.

MR. HENDERSON: We make a point of it that it does come up every day in Parliament. It is that the public does not have confidence in the situation as it exists.

THE CHAIRMAN: The alternative to that is that the public are making themselves effectively felt through their elected representatives, which is the very thing I think you say you want. You cannot say both.

MR. HENDERSON: I merely say this important relationship in the one situation is much more

direct. I can bring much more effective representations to bear in the Law Society or in respect of the medical society than I can in connection with the membership of the Board of the CBC. That is my submission.

MR. ESTEY: The Law Society example -- this is a very technical reply but the question is sharply technical. The Law Society is not regulating its competitors. The Law Society who sits in judgment is not itself in competition with the men in front of him. Individual members on the panel, yes, but the individual members on the Discipline Committee do not sit, if they are personally in competition with the man before them. It is a big thing. The Society itself does not practise law. This society does practise broadcasting.

THE CHAIRMAN: Undoubtedly true. We can always make distinctions in any analogy. When you get to things like the Transport Board, there are many distinctions, and an analogy will only carry you so far.

MR. HENDERSON: The examples start at the bottom of page 8.

3. In Dr. Bonham's Case (1610) 8 Co.Rep.107, the Board of Censors purported to fine and imprison Dr. Bonham for practising medicine without a licence from the College of Physicians. Under its charter, the Board of Censors kept half the fine. The Court held that if it were to be permitted to adjudicate the case it would be a judge in its own cause. The procedure was condemned as "against

common right and reason, repugnant or impossible to be performed; the common law will control it, and adjudge such act to be void."

4. Probably the most celebrated case on the point is that of *Dimes v. Grand Junction Canal* (1852) 3 H.L.C. 759 where Lord Campbell speaking in the House of Lords said:

"No one can suppose that Lord Cottenham would be in the remotest degree, influenced by the interest that he had in this concern, but it is of the last importance that the maxim that 'no man is to be a judge in his own cause' should be held sacred. We have again and again set aside proceedings in inferior tribunals, because an individual, who had an interest in a cause, took a part in the decision. And it will have a most salutary effect on these tribunals when it is known that this high court of last resort, in a case in which the Lord Chancellor of England had an interest, considered that his decree was on that account a decree not according to law, and should be set aside. This will be a lesson to all inferior tribunals to take care, not only that in their decrees they are not influenced by their personal interests, but to avoid the appearance of labouring under such an influence."

That is the end of the quotation.

Even though no one suggested factual bias, a situation of possible bias was considered to be sufficient to create a set of circumstances contrary to natural rights. Lord Cottenham held a minority share interest in the company involved in the dispute. A judicial tribunal must not have the slightest interest in any case depending before it. The interest need not be a money interest. It is sufficient if it is an interest in being or potential in the case of licensing, channel allocation, power approval or operational regulation as in the case of the CBC.

5. William A. Robson in his work "Justice and Administrative Law", 3rd Edition, page 63, points out that licensing is recognized by the courts as a judicial or quasi-judicial function no matter by whom it is performed. The Board of Governors acts in such capacity when holding a hearing in deciding matters for the making of a report to the Minister as between private applicants in the light of the CBC's aspirations.

If I may interpolate another case, it is the case of *Frame United Breweries Company v. Bath Junction*, 1926 Appeal Cases No. 586. Dealing with a licensing problem is considered to be a matter to be dealt with on a broad basis. At page 590 -- this rule, the rule of related bodies, this rule has been asserted not only in the case of the courts of justice and other judicial tribunals, but in the case of authorities which though in no

sense to be called a court, have to act as judges in the rights of others. That is the end of the quotation.

Where they are deciding the rights and views, the principle has its application.

THE CHAIRMAN: Are you suggesting the CBC's Board of Governors decide in a legal sense the question of licences?

MR. HENDERSON: No, I suggest they do it as far as a suspension is concerned, because they order it. They order it. I am taking the question as it appears to be in the legal sense. In the legal sense under Section 21(6) they effect it because the order is the effective order of the Board. In the Licensing Section there is a distinction because the actual order would appear to be an order of the Minister and not the order of the Board, so in the legal sense, no; in the effective realistic sense, yes.

We do suggest in respect of licences the report of the Minister is invariably the recommendation of the CBC and that, from our standpoint ---

THE CHAIRMAN: Invariably?

MR. HENDERSON: Invariably -- I know of one exception.

THE CHAIRMAN: Then it cannot be invariably if you know of one exception?

MR. HENDERSON: Except this: that exception implemented the order. In that case the order of the Board was two-pronged, so I could still be right and say the Minister's implementation order

was an alternative to the suggestion of the Board. The Minister did not act in contravention of the Board order. So, in our submission, in the realistic sense, yes, in respect of the licences.

THE CHAIRMAN: We will take your answer as invariably, with one exception.

MR. HENDERSON: We could argue the one exception when a decision is being made.

6. Similarly when a decision is being made as to whether a person is to be deprived of his licence, or his wave length, a quasi-judicial function is being performed. The court held in the Queen v London County Council (1892), 1 Q.C.B. 190 at 195:

"When so acting, the London County Council are not emancipated from the ordinary principles upon which justice is administered in this Kingdom and which are -- founded on its very essence."

7. All tribunals which have the power of affecting the rights of individuals must act within the bounds of the statute setting up the tribunal and must follow a procedure which conforms to the rudimentary requirements of "natural justice".

Reference is made to General Medical Council v. Spackman (1943) 2 All E.R. 337 at 342; House of Lords. The requirements of natural justice are rudimentary. The courts have repeated time and again that one of those rudimentary substantial requirements is that the decision must be free from bias. Reference may be made to the following

cases to illustrate the nature of the principle:

In Rex v. Sussex Justices (1924) 1 K.B. 258, it was stated:

"It is said, and no doubt truly, that when that gentleman (The Deputy Clerk) retired in the usual way with the justices, taking with him the notes of the evidence in case the justices might desire to consult him, the justices came to a conclusion without consulting him and that he scrupulously abstained from referring to the case in any way. But while that is so, a long line of cases shows that it is not merely of some importance that justice should not only be done but should manifestly and undoubtedly be seen to be done."

I am quite sure when the Board of Governors of the CBC retire, after having heard submissions from the parties involved, that a representative of the CBC in the operating sphere sits with them. I have no personal knowledge of the situation but my instructions are that that happens. And it should not, I submit, when you have an interest against the public, as in the case of this interest which has been a principle of English justice for as long as we have had courts.

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Now, I am quite sure when the Board of Governors of the CBC retire after hearing submissions of the parties involved that a member of the CBC, in the operating sphere, sits with them. I have no personal knowledge of that but I am sure that is what happens. Now, that is in the face of this principle which has been a principle of natural justice for as long as we have had courts.

THE CHAIRMAN: Well, Mr. Henderson, if your legal argument is right, which as I read it is that the authority of the House of Lords in England, the statute is within bounds but in addition it must follow a procedure which follows the rudiments of natural justice. You say this applies not only to courts but any body outside deciding rights and duties so why have you not taken a case?

MR. HENDERSON: Well, I am arguing the fundamental rights. My position is that the statute is as this right --

THE CHAIRMAN: You are arguing at the present time there there is an over-riding principle of natural justice which, even though the statute establishes it, it must conform to this natural justice. If you are right in that argument --

MR. HENDERSON: Well, the statute has given away those rights by depriving me of them.

THE CHAIRMAN: You are saying the statute again?

MR. HENDERSON: Well, parliament is absolute

within its constitutional sphere, now, parliament chooses to take away.

THE CHAIRMAN: Of course they are and therefore this theory of natural justice is not valid.

MR. HENDERSON: Oh, on the contrary it is still valid because surely it is a natural right that can be offended by parliament within its natural sphere. Surely the statute can take or rather it could be argued that the statute cannot take away rights; it can do it explicitly and if it takes away those rights then I have lost them.

THE CHAIRMAN: Take the case of the Sussex Justices, you say there was a situation where the deputy clerk went back with the magistrate in exactly the same way you are saying some of the officials of the CBC go back with the Board of Governors when they are making their decision; in the Sussex case they were able in that case to go to court and there is a judgment to say this is a bad decision.

MR. HENDERSON: But here is one and the same body, it is created by statute as one in the same person. Section 3 says the CBC is composed of so many Governors.

THE CHAIRMAN: So are the Sussex Justices created that way and they adopted that procedure which the court said was contrary to proper procedure. Now here you have another body established

by statute which you say is adopting the same procedure.

MR. HENDERSON: But I say this, that in taking the case before the court I am faced with a statute that specifically authorizes them, as I read it, to do that.

THE CHAIRMAN: So did the Sussex Justices.

MR. HENDERSON: No, I do not think it did, I do not think the analogy is complete but here my point is --

THE CHAIRMAN: It is your analogy.

MR. HENDERSON: No, I am merely saying -- my point is, I am saying the statute creates a situation and offends a fundamental principle and I want the statute amended. That is my point.

THE CHAIRMAN: No, you are not saying that at all, you say:

"All tribunals which have the power of affecting the rights of individuals must act within the bounds of the statute setting up the tribunal and must follow a procedure which conforms to the rudimentary requirements of 'natural justice'."

MR. HENDERSON: Yes, but one of those rudimentary principles, the statute can say that one or other of those principles does not apply here; the statute can say that and the statute

can deprive me of one of those principles and I suggest to you that is what the statute has done here and that until the statute is amended and we get back to the common law principles I am in a position that I cannot apply these elementary principles.

THE CHAIRMAN: Where is it the present statute states that the CBC officials can go out with the Board of Governors?

MR. HENDERSON: Well, it is created as one and the same person and, therefore -- the operating head of the CBC is the Chairman of the Board in its judicial capacity, he is there.

THE CHAIRMAN: No, that is not correct, the statute says that the operating head of the CBC shall be the general manager.

MR. HENDERSON: Who is responsible to the Chairman of the Board. Perhaps I have a case, perhaps I should take one to the courts.

THE CHAIRMAN: I might have misinterpreted your argument but it did seem to me, I am only debating this to get at the bottom of it, it did seem to me that your argument that in law there has been some form of over-riding principle of national justice --

MR. HENDERSON: Yes, I am convinced there is.

THE CHAIRMAN: If that is in law then it is an over-riding principle which would over-ride a statute.

MR. HENDERSON: Oh, no.

THE CHAIRMAN: Well then, it is not overriding.

MR. COYNE: I wonder if I might interject here. If I understand Mr. Henderson, his point is this, that he is complaining that the power of the Board of Governors of the CBC in adjudicating in matters affecting the rights of private stations is an infringement on natural justice. Am I right?

MR. HENDERSON: I am sorry, the power to regulate -- a statute in giving that power offends, that is my point.

MR. COYNE: That is, it is the Board of Governors having the power to adjudicate on the rights and duties of the private stations?

MR. HENDERSON: That is correct.

MR. COYNE: Now, I would like you to comment or describe for us what are the rights of private stations in the broadcasting field.

MR. HENDERSON: Well, one is the right to operate and the right to continue to operate.

MR. COYNE: Why the right to continue to operate, surely the right is to hold a license which was granted under the statute?

MR. HENDERSON: Realistically it gives me a right because I do operate under it. Let me put it this way, in operating and exercising the license I am exercising rights and certainly if I am operating in the city of Ottawa under a license

I have a right to prevent somebody else from operating a radio station as long as I have that license, to prevent others from coming in.

MR. COYNE: Surely you have no right?

MR. HENDERSON: Am I a licensee?

MR. COYNE: Yes.

MR. HENDERSON: Yes, I have the right under the license, that gives me the right to continue to operate. Without that license I have no right to operate.

MR. COYNE: Well then, you have a right to operate under the law.

MR. ESTEY: Under the Radio Act.

MR. COYNE: Yes, and under the Broadcasting Act subject to public policy so the law is --

MR. HENDERSON: It may be a defeasible right but I have a right. There may be circumstances that are circumscribed but they are there.

THE CHAIRMAN: A defined right.

MR. HENDERSON: It is defeasible, I agree it is both, it is limited by the terms of the statute, it is limited by the terms of the license but the right is there.

THE CHAIRMAN: Mr. Coyne's point is you have not in law a right to operate, you have a right to operate in a certain way.

MR. HENDERSON: Well, you have added something to my rights to operate; I have a right to operate in a limited way, It is just a play on words. I have a right, now, I want that right

whatever it may be and however limited it may be to be subject to a test by an independent tribunal. It is limited, it is very limited I agree but within the terms of that limitation I want an impartial judge to say how limited it is, not the fellow who granted it.

THE CHAIRMAN: Is it not accurate to say that you have a right to operate subject to the jurisdiction of the Board of Governors of the CBC?

MR. HENDERSON: That is right, yes.

THE CHAIRMAN: And that is all?

MR. HENDERSON: Well, that is all and I would rather we were not subject to the -- I would rather have that sword of Damocles in the hands of the fellow I am not competing with.

THE CHAIRMAN: But you see, you are operating under what is virtually a public franchise and there are many examples of public franchises being given in a limited way; a person who operates an artificial gas company has a right to operate providing they observe prices that are set for them; a person who operates trucks has a right to operate subject to the rules and you can go on with endless hundreds. Now, you have been granted by statute a right to operate subject to the control of the Board of Governors of the CBC.

MR. HENDERSON: That is right, that is what I am complaining about.

THE CHAIRMAN: I think your point is-- well, go on from there.

MR. COYNE: Well, my point was simply this, I rather gathered from Mr. Henderson's remarks, his analogies that he was -- rather, that his analogies really arose in spheres in which the judicial body or the tribunal was determining general rights and duties which citizens, as citizens, had under the law and I was just asking him too -- really the point you brought out as to whether in this case the very limited nature of the right of a licensee under the Radio Act does not affect the situation.

MR. HENDERSON: I have assessed my right, if I am a licensee in terms of dollars I have assessed it by making a very substantial capital investment and if I did not think I had some right I would not make that capital investment.

MR. COYNE: But surely you have not any natural right for this protection of your investment, we are talking of natural justice.

MR. HENDERSON: Well, that is my right, my right is to operate in accordance with the statute and the license. The right to operate gives me certain rights and duties, I must operate in a certain way, the statute prescribes it, political broadcasts, certain obligations in sports events, I must meet my obligations from the rules and regulations relating to these.

MR. COYNE: Including the rules and regulations of the CBC?

MR. HENDERSON: Those are the rules I am talking about, they have created rules and regulations which define that right. Now, they also interpret these rules and regulations just as in the sphere with which you are very familiar, the customs sphere you have got rules and regulations emanating from Mr. George Young, interpretations coming from him and I might disagree with him, in fact, I do. I would read them over and consider the points, the statutes that govern him but I have no effective way of appealing his interpretation of that particular regulation because who do I go back to, I go back to his boss. What happens then, he probably has the right to sit in with them when I am gone.

MR. COYNE: You have no effective appeal as to the meaning of the rules and regulations?

MR. HENDERSON: I have no effective appeal if I disagree with his interpretation of these rules and regulations. I submit I should be in precisely the same position as the Tariff Board where if I disagree with a memorandum that is given by the judicial tribunal I have an appeal to an independent tribunal, no interest in the result of that decision, but now I go to someone who has that interest because he is competing with me and that competition might affect his ruling.

MR. COYNE: I think I understand your point and your analogy there is the Tariff Board where you have an appeal to an independent tribunal on a question of law really.

MR. HENDERSON: On a question of interpretation.

MR. COYNE: On a question of interpretation.

MR. HENDERSON: What happens now is that Mr. Young will make the interpretation, and as I read it, and I am not being critical of him -- --

MR. COYNE: Oh no.

MR. HENDERSON: I am merely talking about the system. As I read it, he says it should be noted that broadcasts of sporting events become participating when sponsored by more than one advertiser and these conditions apply.

There is a ruling of December 10, 1947, and as a lawyer, my immediate reaction is: "who said so".

THE CHAIRMAN: Would you mind reading that again. I didn't hear it.

MR. HENDERSON: Yes, this is December 10, 1947: "It should be noted that broadcasts of sporting events become participating when sponsored by more than one advertiser." That is what the advertiser gets as I take it, he gets a letter from the broadcasting regulations division. Now there is an interpretation. Now, if I am running a private station, my immediate reaction would be "why".

It is either according to the law or it is not. It is either a whim of Mr. Young's or it is a whim of the CBC and in neither case, have I anything to say about it. It suddenly comes upon me as law. I must comply with it, because he has directed me to do so, and if I don't do so, he will say: "Ah, but

you have a black mark against your station" and then, when my license comes up for renewal I am faced with a black mark, whatever that may be, but that is the way it operates. I am likely to be suspended.

Now I suggest to you that this is wrong because I ought to be given an opportunity to determine whether his interpretation of the law is right, and not have it done by someone who is in competition with me, but by someone who is completely unbiased and makes a judicial determination impartially.

THE CHAIRMAN: Oh, but that is not quite right, you have the right of appeal.

MR. HENDERSON: I have no effective appeal -- and that is what I said throughout.

THE CHAIRMAN: Oh no, what you can do, if you disagree with this interpretation, you can invite him to suspend your license and appeal under subsection 7.

MR. HENDERSON: Yes, I could, but my point is when I do go there, who do I find?

THE CHAIRMAN: You can go to the Exchequer Court.

MR. HENDERSON: I can go to the Exchequer Court, but by that time it is too late.

THE CHAIRMAN: It may not be. A suspension can be suspended.

MR. ESTEY: You have to go all over the place, it is not realistic.

THE CHAIRMAN: I think perhaps you are making

your statements too broad, Mr. Henderson.

MR. HENDERSON: I am making them broad, because I believe this is the fact. I have talked to broadcasters who have told me that they succumb to this practice because, for one thing, there is the time factor, and secondly they are not going to bite the hand that feeds them.

THE CHAIRMAN: Well, that is the fault of the private broadcasters.

MR. HENDERSON: If I were a private broadcaster I am sure I would do whatever the CBC said to me because the CBC has the power of life and death over me and I am not going to fight them. I am astounded that these gentlemen are putting themselves in this position because they are in the hands of the CBC by taking positions contrary to that of the CBC which has the power to suspend them.

THE CHAIRMAN: They want to get new licenses?

MR. HENDERSON: Of course -- they knew that this was the situation and that they got them on that basis.

THE CHAIRMAN: They want to get a new deal -- they want to get a new license.

MR. HENDERSON: They want to get a new license upon which they can operate according to the law.

THE CHAIRMAN: Oh no no.

MR. HENDERSON: Yes that's right, because they are subject to the rules and regulations of the

CBC which are sometimes made even after they get their license.

THE CHAIRMAN: But they accepted their licenses on the understanding that the CBC would be in control -- that is the law.

MR. HENDERSON: Yes that is the law.

THE CHAIRMAN: And now what they want is a new one.

MR. ESTEY: Are we not narrowing this case down further than perhaps a Royal Commission should? We have always thought in terms of the interests of the private broadcaster not coming above the public interest.

THE CHAIRMAN: Oh I quite agree, but this is your argument, Mr. Estey. If you want to argue that, that is quite a different matter, but you are arguing this on the basis of strict law.

MR. ESTEY: Well, I am not trying to extract ourselves from either a narrow or a broad plane but, I am saying this, we don't like the statement that we are just seeking to get new licenses. We are saying the conditions under which the present licenses are issued are contrary to the public interest and contrary to natural justice.

THE CHAIRMAN: No, you are seeking to get a different license. Now that may be a perfectly legitimate thing to seek. It may be something that is well able to be argued and to be decided on, but I am merely suggesting to you that you have put your case on the basis of strict law. I am only dealing with your strictly legal argument.

MR. ESTEY: Dealing with one point at a time, I am not saying you are a hundred per cent wrong, I am not saying that at all, but, if we did take the narrow legal ground and say that under the Radio Act we have a license, and under the Broadcasting Act the CBC in a specific case should not interfere with Station XYZ, then I say the logical answer to that, is that so long as Section 21 stays in the act nobody is going to take the CBC to Court.

THE CHAIRMAN: That may be a very good reason for section 21 to be changed, but that is not your argument.

MR. ESTEY: Well it is part of it.

THE CHAIRMAN: Your present argument is based strictly on the present law which now exists where you say there is a conflict of natural justice.

MR. ESTEY: That's right. But we can't take them to court because it is a parliamentarily created contract.

MR. HENDERSON: We don't think it is operated in the public interest because we do not think that these interpretations, from time to time, have been necessarily always in the public interest and we think that the public interest in this structure can go by default.

THE CHAIRMAN: We are quite willing to hear you on any question of public interest.

MR. HENDERSON: Well, we do come to that.

THE CHAIRMAN: But my remarks have been made to you directly to your strictly legal argument.

MR. HENDERSON: But I have submitted to you

that the regulations may change and the situation may be different after we have our license and that although we know the system, we nevertheless find that, operating within that system, they changed the rules and as a result we are in a very different position.

THE CHAIRMAN: But that would be the same, would it not, whether you have your independent board or not -- you might take a license under certain terms and new regulations may come out.

MR. HENDERSON: Correct, but with that independent determination I would be perhaps more ready to run the risk. In other words, we are always in the awkward position of having suspensions and having rules and regulations which are in the hands of a competitor and in the interests of the competitor, rather than the public interest, which may be the determining factor. I have lost the place.

THE CHAIRMAN: I don't remember where you got to.

MR. HENDERSON: I think I was at number 8 on page 10 and this case is put in because it shows how this applied very recently -- "the Supreme Court of Canada in Szasz, (1955) S.C.R. 1 applied the principle and stated that where there is a reasonable apprehension that an arbitrator may not be acting entirely impartially his finding will be set aside. Mr. Justice Rand applied the statement of Lord Hardwicke that "in a matter of so tender a nature, even the appearance of evil is to be avoided."

Now the arbitrator's decision was set aside

and a new arbitrator was required to fix the amount of compensation to be paid.

We submit that the MacQuarrie statement is applicable to this field, as it was stated at an earlier time by members of the Commission themselves.

" This Association submits that the situation before this Commission is identical to that which was considered by the MacQuarrie Commission and which led to the following report:

"When an investigation is completed, the Commissioner is required by the Act to assume an entirely different and incongruous role. He must make an appraisal, intended to be public in nearly all cases, of the situation which has been brought to light by the investigation carried out at his instance and under his control. He is given the compromising appearance of being at one and the same time prosecutor and judge. No matter how fully his assessment of a situation may be justified by results, its value is lessened by the inconstancy of his position."

Now from time to time examples of the effect of this have been requested by the court. It is our submission that bias is difficult to prove, being as it is, a state of mind, because no one expects a regulatory body to reveal bias in its judgments or in its pronouncements. It is not going to give that in its

reasons for judgment, that it had in the back of its mind its own situation when it deals with the rights and duties of the private broadcaster, but it cannot divest itself of the fact of the knowledge that, when granting licenses in Ottawa, CBC might be affected. It is just human nature, which is such that it cannot. Now either one of two things will happen. It will either make a decision biased in its own favour or biased against itself on the grounds that it does not want to be accused of being biased. In neither case does it operate in the public interest. Human frailties are such that in our view this will happen.

THE CHAIRMAN: How do you define bias?

MR. HENDERSON: Bias is an interest against a duty. Bias arises when you make a determination having an interest in the result -- no matter how slight. When you have an interest in the result that flows -- and the CBC must have an interest when it makes a determination -- it cannot divest itself of that. As we put it, it is a bias that is built in to the statute and we are asking that the built-in bias be removed. It is for this reason that the mere existence of the possibility of bias is sufficient to justify a separate tribunal. It is because of the difficulty of proof that the courts say that justice must be seen to be done and you don't have to prove that bias took place. The mere possibility of it is sufficient.

What is important is the fact that there may

be bias. It is the usual practice in free societies to correct a situation of potential danger before irremediable damage can be done.

Benevolence, even generosity, in a tyranny is no argument in favour of the principle of tyranny. Benevolent use of power is no argument for suspension of long-established legal and constitutional principles or the normal practices and procedure of government.

The extent to which present powers are used properly or otherwise could best be assessed by detailed analysis of the files of the Station Regulations Division. We suggest, however, that the question of whether the present powers of the Corporation have in practice indicated bias or abuse is beside the point.

That they have not abused it speaks highly for the individuals but does not deny the potential danger. That the individuals who compose the CBC have not abused their power, speaks highly for them as individuals but it does not deny the potential danger. Again and, even assuming that bias cannot be proved, that only says that the CBC Board of Governors have been inhuman, in our opinion, but it does not deny that the potential danger is there.

THE CHAIRMAN: Is that not completely opposite to the point which you raise in an earlier sentence, two paragraphs up, where you say the usual practice in free societies is to correct a situation of potential danger before irremedial damage can be done?

MR. HENDERSON: Yes.

THE CHAIRMAN: We have had this situation now for over twenty years.

MR. HENDERSON: Yes.

THE CHAIRMAN: And in order to test your suggestion that there may be irremedial damage, one would think that sooner or later damage would begin to turn up.

MR. HENDERSON: We think it is; we say so. All that has indicated is that during that period of time we have had men who, as I put it, are inhuman, and have been able to divest themselves of the effect of their invidious situation. I don't believe they have been, and I am not being critical of them, because it is an impossible situation. It is a situation which lawyers often find themselves put in, and it is one they must try to stay away from because the interest against the duty is a most impossible situation. I don't believe that they have been in the past twenty years free from exercising that position adversely in the public interest.

THE CHAIRMAN: Mr. Coyne, in connection with the specific interests, in so far as your examination is concerned would it be better to have these recorded now, and you can come to them in the course of your examination, or would you prefer to discuss them now?

MR. COYNE: Well, I take it Mr. Henderson just proposes to lay these examples before the Commission. I think it is quite immaterial to me. I would expect to ask some questions on these examples.

THE CHAIRMAN: Yes.

MR. COYNE: The text is quite clear, and possibly everything that could be of use to us will be brought out in the examination.

MR. HENDERSON: May I make this comment: we have gentlemen here with us now who are familiar with the specific examples. These are operational matters which are questions of fact, and I believe

the gentlemen will be here this afternoon, and maybe that would be a good opportunity for Mr. Coyne to raise the questions with them, because they may be required to leave after today.

THE CHAIRMAN: I discussed it with you and Mr. Estey last night, and we decided to get you to complete this first section.

MR. HENDERSON: That is correct.

THE CHAIRMAN: This section goes to page 20, and you are over half way through it now; then we will move to questions on this section. That leaves open a great many general things which we will have to deal with.

MR. HENDERSON: Yes, Mr. Chairman. Since, however, the Commission has asked for specific examples, may we point to some without departing from our major contention that it is the principle which is important. First, we refer to the numerous examples already given the Commission in prior evidence: (a) an instance of programme take-over cited in Montreal by the President of the Canadian Association of Consumers. That, of course, was a programme taken over by CBC following a public comment.

(b) The Corporation's insistence, cited in Montreal by CJON-TV that the station carry a programme directed to farmers after the station had pointed out there were less than one hundred farmers in its area but many fishermen, and the inability of the station to secure Corporation programming directed to these.

(c) The network instances cited by CFCF in Montreal.

(d) The network instance described by CJAD Montreal.

May I make a correction here: (e) should read, the instance outlined on page 10 of document 5, and pages Nos. 5, 6 and 7 of document 2 submitted by CJOR Limited.

(f) The network instance cited by CKWX in Vancouver (page 1703).

(g) Refusal of permission to carry addresses by the Minister of Finance (page 2149), by the Prime Minister unless line charges were billed (page 2150) and subsidiary network competitive situation (page 2150) cited in Edmonton by CFAC.

Then we want to comment on the directional antenna at Hamilton where viewers in the City of Toronto are not permitted to view Hamilton, whereas the United States television broadcasters are beaming into Toronto. That may have been dealt with in CJOR Limited's brief, but I want to be certain it is drawn to your attention so it can be covered in your questions.

In 1947 channel 860 now occupied by the Corporation's CJBC in Toronto was arbitrarily withdrawn from Radio Broadcasting Station CFRB in that city, which had occupied it then for some fifteen years.

I say "arbitrarily" because I was advised the decision was made before there was an opportunity to be heard, and it was not drawn in any way to the

attention of the licencees that they were not operating efficiently.

THE CHAIRMAN: We will come to that.

MR. HENDERSON: The proprietors of the latter station were required to undertake a very heavy capital outlay to provide service on the new channel assigned to it. The new channel, though occupied at higher power, does not give as complete coverage as the old one.

6. At about the same time Radio Broadcasting Station CFCN in Calgary was removed from use of channel 1010 in order that this might be occupied by a new Corporation station under construction. CFCN had occupied the channel for fifteen or sixteen years. In neither case was there the slightest suggestion that the private stations concerned were not operating efficiently in the public interest.

7. On December 19, 1936, the Corporation recommended to the Minister of Transport that no private station not then operating in excess of 1000 watts of power (and very few were) be permitted to exceed that power. This recommendation was made in spite of the fact that channels on which most of these stations were operating could (and should) be used at 5000 watts of power by international agreement. This move certainly did not serve the public. The situation was protested vigorously by private stations and others until it was rectified in 1946, but meantime, irrevocable harm had been done to the potential of Canadian coverage by Canadian stations.

We will have evidence to lead on that, Mr. Chairman, this afternoon.

8. Active participation of the Corporation in international negotiations concerning allocation of wave lengths led to protection of the Corporation's own competitive position at the sacrifice of the public interest. Such participation was very active, there being on at least one occasion an international negotiating committee on which the CBC representative was vice-chairman. During the 1937 NARBA conference, the channels then being used by radio broadcasting stations CFRB Toronto, CKLW Windsor and CKAC Montreal should have been listed for Canadian use at 50,000 watts of power under international standards then prevailing. This use was acceptable to representatives of the Department of Transport. However, at the insistence of the CBC, the channels then being used by these stations were limited to 5000 watts of power even in the international agreement with resulting curtailment of Canada's resources in these particular instances.

THE CHAIRMAN: I think those are the letters Mr. Estey filed as Exhibit No. 317.

MR. HENDERSON: These were the main letters which were read into the record, and again we will have evidence which will be adduced in connection with this paragraph as well.

9. Policy followed in relation to television channel allocations has led to artificial restraints on channel availability in certain key areas and to unnecessarily slow development of the television

medium.

On this statement we rely on the evidence given by Mr. Finlayson in his evidence given in Montreal.

While it may be argued that this is government rather than CBC policy, it is obvious that the government must act in these matters on advice received from the Corporation. Indeed the Corporation acts in the capacity of deputy minister on broadcasting, exercising all the powers and privileges of such a position without appearing to do so and without the element of full and clear responsibility usually operating in such cases.

10. Another instance is the Corporation's prohibition in practice of networks without giving the impression of such prohibition. Regulation 14(1) reads:

"Except with the written consent of the Corporation no station shall operate as part of any established chain or network of stations inside or outside Canada."

Regulation 14 (3) reads:

"Except with the consent of a representative of the Corporation no station shall broadcast any reproduced programme or speech which would have the effect of simulating a network of stations not authorized on behalf of the Corporation."

In practice, the conditions surrounding permission

for networks have made operation of these impossible. Until recently, necessary lines had to be purchased from the Corporation, not the line companies, at prices higher than private stations or the Corporation could buy those lines direct. Permission had to be secured for each such individual network broadcast, making it absolutely impossible to enter into essential contracts for personnel, programmes or business. Regulation 14(3) represents a regulatory device to protect the Corporation's operating position and its de facto monopoly of networks. Moreover, it bears more heavily upon non-network private stations than on those with network affiliations.

Perhaps we should read into the record, Mr. Chairman, two recent letters from the Director of Station Relations. The first one is a letter of July 12th, 1956. The second one appears as Annex C to our Supplement 16, because I think that the letter of August 24th, 1956, does not give the full story, and the two letters should be read together. Perhaps we should read the letter of July 12th, 1956, into the record, and it should be read in association with Annex C which is to be found at the end of our brief.

"To All Radio Stations:

"Subsidiary Hookups

"At the recent meeting of the Board of Governors, consideration was given to points raised by some Quebec stations regarding the supplying of wire lines for subsidiary hookups for radio

broadcasting.

"The Board decided, for a trial period of one year, to allow any private station, if they wished, to negotiate directly with communication companies for lines for subsidiary hookups, provided of course they have the previous authorization of the Corporation for the hookup. Under this procedure the stations participating in a subsidiary hookup may also bill sponsors directly.

"The suggested procedure to which the Board has agreed for the trial period will be as follows:

"The proposed originating station will apply to the Station Relations Division of the CBC for authorization for the subsidiary hookup giving full details about the nature of the proposed programme, time, duration, length of series and list of stations required. On receiving authorization, the stations concerned may negotiate directly with the communication companies and deal directly with sponsors.

"Previous policies and rulings dealing with subsidiary hookups will be followed in making authorizations.

"Yours faithfully,

George Young,
Director of Stations Relations."

The two points in the letter are (1) the Board decided on a trial period of one year, which, in our submission, makes it impractical; I am advised in respect of hookups of this nature you must make long-term contracts, and the one-year provision, I am instructed, does not permit these long-term contracts to be made.

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Secondly, there is the requirement of previous authorizations of the Corporation for each hook-up. Then at annex C, which is the last page of our brief, the fourth paragraph again contains the same limiting provision that there must be a separate authorization for each programme or programme series. So that the limitation imposed, I am instructed, did not enable realistic network hook-ups.

THE CHAIRMAN: I will have a question about that.

MR. HENDERSON: I appreciate that.

Present operating regulations prohibit news and commentary on any authorized private network thus depriving the public of alternative sources of news and opinion by means of the simultaneous wide distribution afforded by the network process, and ensuring that only Corporation selection news and comment can reach large potential audiences simultaneously via network.

Regulation 13 prohibits the use of re-produced programmes except for incidental purposes between the hours of 7.30 and 11.00 p.m. in the evening, except with the previous consent of the Corporation in writing. Enforcement of this regulation does prevent private stations from using high quality syndicated programmes and thus protect the Corporation's audience position in relation to its own networks. This too, bears more heavily upon non-network stations.

Many of the Corporation's regulations have no bearing on an attempt to secure distribution of programmes of national importance or interest produced by it. Such regulations include, 4 (1a, b, c, d, e, f, g,) 4 (2), 4 (3), 4 (4), 4 (5), 5 (g), 5 (1), 7, the latter section of 10 (1), 13, and 15. In fact, the Corporation's responsibility to provide "a national broadcasting service" could be discharged by virtue of the provisions of the Broadcasting Act, the Radio Act and Section 11 of the regulations.

THE CHAIRMAN: Well, you don't suggest the regulations are not in keeping with the programming law or are improper?

MR. HENDERSON: Not a bit.

MR. COYNE: I wonder -- because under Section 222 of the statute, the Corporation shall, each year, receive a report of the activities of all private stations and shall make recommendations to the Minister.

MR. HENDERSON: I don't make anything important of that.

THE CHAIRMAN: What is it here for?

MR. HENDERSON: It is there to show there are many detailed regulations that we think are not of any significance in enabling the CBC to provide a good service.

THE CHAIRMAN: But it may very well be necessary for regulatory requirements of the Corporation. When I read this, I could not

understand why on earth it was put in. If you are saying those regulations should not be there, that is one thing, but you are not doing that.

MR. HENDERSON: No, as long as they are a recognized function, I can understand those regulations being in.

THE CHAIRMAN: The statute is they must report on private stations.

MR. HENDERSON: As long as the present structure is as it is, I see no fundamental objection to it. The suggestion is, it is not necessary to enable them to distribute programme of national importance.

THE CHAIRMAN: Are you suggesting, taking it on a broader sphere, there should not be any allowance taken of private stations in any regulatory system?

MR. HENDERSON: No.

THE CHAIRMAN: I confess I don't know what on earth it is in there for. You seem to be making a great point about a lot of redundant regulations.

MR. HENDERSON: I don't make any great point of this paragraph at all.

THE CHAIRMAN: I wonder why you make any point at all.

MR. HENDERSON: I merely say, it is there
so --

THE CHAIRMAN: So you are reading it.

MR. HENDERSON: I am explaining to you

why it is there because in enabling the CBC to perform its functions in the operating sphere these regulations are unnecessary.

THE CHAIRMAN: You say, if the only thing the CBC has to do is to provide programmes of national importance you would not need these regulations.

MR. HENDERSON: That is right.

THE CHAIRMAN: But you didn't suggest either in the present set-up, or any other conceivable set-up, this type of regulation would not be required.

MR. HENDERSON: No, we think it probably bears more heavily on us under the present system because we are, in fact, giving detailed information to our competitor that we ought not to be giving so, to that extent, we are giving our competitor information that could be turned against us but that is not fundamental to our position.

National private networks operating in Canada were dismantled after passage of the Broadcasting Act of 1932. Repeated efforts to secure permission for revival have failed. Intensive negotiations were conducted with the CRBC, CBC, and the government between 1939 and 1945, with many alternative blueprints being presented. Only results were:

(a) Formation of a second nationwide English network by the Corporation.

I understand in 1944 what happened, private broadcasters went to the CBC with a blueprint with the result instead of the private broadcasters' blueprint being accepted and being permitted to carry it out the CBC took over and constituted a second CBC network. I submit, this discouraged the private broadcasters of forming one again.

THE CHAIRMAN: They have, in fact, stayed discouraged since 1943?

MR. HENDERSON: Mr. Finlayson's evidence put it this way. This body will just take so much. He tried to do it on several occasions and in each case the CBC ended up with his proposed suggestion so he stopped and that is my understanding of his evidence.

THE CHAIRMAN: The way you say repeated efforts have failed, I want to know if there have been any efforts in the last 12 years.

MR. HENDERSON: We will have some evidence on that.

THE CHAIRMAN: We are talking about national networks.

MR. HENDERSON: (b) Subsidiary networks could be formed with prior written permission of the State agency on a per-broadcast basis, making formation of such networks difficult or impossible in practice.

For other instances please see our supplement No. 12, pages 8, 12, 13, 14, 15, 16, 17, 20, 23.

CBC interest not necessarily always public interest.

In addition to being the competitive-operating body described above, the CBC is also a regulatory body acting in a quasi-judicial fashion. The Corporation writes, interprets and enforces regulations which govern the operations of its competitors. It adjudicates upon matters in which it has an interest of its own as against that of actual or potential competitors. It also adjudicates the public interest in these matters while having an interest of its own without there being an opportunity for expression of other views or an opportunity for definitions other than the Corporation's of the public interest.

And yet the interest of the Corporation may not, at all times, be identical to the public interest. There is in the parliamentary committee minutes of 1942, page 78, an editorial that has been read into the record which we submit, sets out an example where the CBC, by its very structure, may have pressure groups within it who are seeking a course of action that may end up to the public interest going by default. I think the picturesque phrase is "republic of friends". It could happen. And there it is. It has been drawn to the parliamentary committee that it can arise.

In granting of a licence to a private station, public notice is given and a public hearing held. Representations pro and contra are

made by the applicant and other interested persons. The Corporation's Board then withdraws to formulate its recommendation. At such closed meetings, employees of the Board's Corporation may be heard but no opportunity for reply is given the applicant. A recommendation is then in fact made and published by the Corporation upon which the Minister and then we come to our phrase again invariably acts.

However, in respect of channels to be operated by the Corporation, no public hearing takes place. A recommendation is made to the Minister without the public interest being considered independently of the Corporation's interest or without the benefit of public debate which would permit all viewpoints to be openly heard. For instance, the Corporation recently changed its television station in Toronto from channel 9 to channel 6, without there being any opportunity for public hearing or debate. This move cost the public approximately \$900,000.

May I pause for a moment, Mr. Chairman, this cost referred to two not one station. It should be half that in relation to this particular context. This figure was taken.

THE CHAIRMAN: Do you mean the cost of switching a channel from 9 to 6 cost the CBC \$900,000?

MR. HENDERSON: My instruction is it was half: or some part of it. That the overall cost of making two switches was \$862,000.

MR. ESTEY: No, no. It was taken from a press report but it is an error. The press said it was for increasing the CBC power and switching and increasing CBLT power. It should be for changing frequencies and increasing CBLT power and increasing CBC power. We don't know which part of the cost is attributable to CBLT.

THE CHAIRMAN: You mean the total cost involves something that happened in Toronto and Montreal?

MR. HENDERSON: That is right. I want to be careful. This is not to be interpreted as being applicable to this one station. But we want to draw the Commission's attention apart from the CBC's determination of the public interest, public interest goes by default.

THE CHAIRMAN: Now wait.

MR. HENDERSON: There was no public hearing.

THE CHAIRMAN: Public interest, apart from the CBC's determination, goes by default?

MR. HENDERSON: The CBC decides what is in the public interest without there being a public hearing. In other words, there is no opportunity for anybody else to argue what the public interest is. It is left entirely in the hands of the CBC.

THE CHAIRMAN: You are not suggesting that every technical decision by the CBC in the operation of its own stations should be open to the uninformed views of the public?

MR. HENDERSON: No, but that I say bears against private stations.

THE CHAIRMAN: There is no private station; this is television.

MR. ESTEY: The question is in two parts, of course. The answer to the first part, every technical thing should not be open to public hearing, but we are not talking about an internal technical matter, we are talking about Canadian channels, and we suggest the decision on Canadian channels should be held in the open.

THE CHAIRMAN: Let us have some sense here. What possible public evidence would there be that would say whether ^{it is better} the CBC with its one station in Toronto ought to be on channel 9, channel 10 or channel 6?

MR. HENDERSON: I think this is sense and I think we would be making representations, and I am quite certain Mr. Chandler --

THE CHAIRMAN: What possible interest would your people have?

MR. ESTEY: Because the proximity of the United States, we are optimistic enough to think we are not forever sentenced to exile Toronto television, therefore we would like to ---

THE CHAIRMAN: You would make representations, "Don't go to Channel 6 because we want it"?

MR. ESTEY: Or it could be Channel 6 ¹

because the United States may want it.

THE CHAIRMAN: There is nothing to prevent you making these remarks to someone in the CBC.

MR. ESTEY: Informally, but there is no public discipline.

THE CHAIRMAN: This suggestion about a public hearing on technical matters is reaching pretty far.

MR. ESTEY: The question is not that it is highly technical -- perhaps we should postpone that.

MR. HENDERSON: We were talking about the cost to the public. Page 62 of the Corporation's main memorandum to this Commission says:

"In the last ten years six parliamentary committees and two Royal Commissions have considered broadcasting matters. During the ten years the Corporation has been occupied over one-third of the time in furnishing explanations of the system and its operations to these bodies, often in considerable detail."

This indicates that Parliament and the Government have recognized there is, in fact, a divergence of interest between the CBC interest and the public interest. Another indication of that divergence is given by results of there being CBC representation at international negotiations concerning channel allocations in addition to the public interest representation of the Departments of Transport and External Affairs.

THE CHAIRMAN: In one part of your brief you talk about a non sequitur, I think this is the prize non sequitur. How do you say that because Parliament is doing its job of supervising the CBC, looking into it and reflecting the public interest in the CBC, that this indicates that the Government has recognized that there is a divergence of interest between the CBC interest and the public interest -- trying to reflect the public interest in the CBC operations in a proper and effective way that our system does?

MR. HENDERSON: But surely they are determining whether or not the CBC in operation is operating to the benefit of the public, that the CBC's determination of what the public interest is is not in itself sufficient, that there must be these investigations, there must be these checks. I submit that if there was an independent regulatory body ---

THE CHAIRMAN: Not responsive to Parliament?

MR. HENDERSON: Well, it has to be -- yes, unresponsive to Parliament, because they have to be exercising judicial functions.

THE CHAIRMAN: So Parliament is divorced from any control?

MR. HENDERSON: Well, I would not say divorced from any control; it can change the structure, but it is divorced from its day to day judicial determinations, yes, that is right. I would carry this through. I submit that if we did have such a structure there would be greater public confidence in the CBC which would result in fewer

inquiries.

THE CHAIRMAN: Well, would you not say this, Mr. Henderson, that the whole result of these innumerable parliamentary inquiries is, in fact, it is a democratic method that we have adopted to study this matter and has in fact confirmed the powers of the CBC time after time, has in fact confirmed the nature of the system, has in fact said that the CBC is reflecting the public interest?

MR. HENDERSON: There has been in fact no change, that is right. The fact that this Commission is sitting shows the matter is open to public debate.

THE CHAIRMAN: There is no doubt about that.

MR. HENDERSON: So I submit there has been no change. Another indication of that divergence is given by results of there being CBC representation at international negotiations concerning channel allocations in addition to the public interest representation of the Departments of Transport and External Affairs.

THE CHAIRMAN: Do you suggest there should not be CBC representatives at international conferences?

MR. HENDERSON: I do not want to touch so close, but we do have a witness who is familiar with what has transpired at international conferences. I would not want to answer that question directly at this particular moment other than to say this, that I can see that they must be there for technical matters.

THE CHAIRMAN: They must be there for more

than technical reasons.

MR. HENDERSON: That might well be.

THE CHAIRMAN: You seem to be suggesting that there is something wrong when you say there is a divergence between the CBC interests and public interests because CBC representatives are at international conferences.

MR. HENDERSON: No, not because they are at the conference, but because they bring pressure to bear at the conference reflecting the limitations inherent in their own operations, which might adversely affect this country. In other words, by the limited funds available to them, by the limited outlook they have, by reason of the nature of their operation, they may bring pressure to bear which would adversely affect the position at an international conference.

THE CHAIRMAN: What you are saying is, they may be wrong, like any other board; the Department of Transport may be wrong?

MR. HENDERSON: But they are wrong about their ability to perform, not in the potential of this country to perform. In other words, the potential of the private broadcasters is not considered at these meetings; the potential of the CBC is considered, and to that extent you only get one side of the picture brought to bear on the Department of Transport negotiating team.

THE CHAIRMAN: No such thing. I know as a matter of fact there are a lot of private broadcasters go to these international conferences.

MR. HENDERSON: And they are not allowed

to go in.

THE CHAIRMAN: Well, they go.

MR. HENDERSON: They go and sit in a hotel room; they are not allowed in. There is a very great difference between being part of the negotiating team and sitting in a hotel room and hearing rumours from down the hall.

MR. COYNE: I am not quite clear as to whether you said they should not be at these conferences.

MR. HENDERSON: No, I say they should be there, but I am getting -- and I am careful to say I am getting into a technical field that I would prefer witnesses to deal with because I have never been to one of these conferences, but I am informed. I say that the CBC certainly has a right to be there, but on the information that I have, they bring to bear pressures on the Department of Transport having regard to their own operating potential without regard to the private broadcasters' operating potential, which may result in the loss of a channel wave length to this country in favour of another.

MR. COYNE: Well, then, you think the CARTB should also be there?

MR. HENDERSON: I do.

MR. COYNE: I just wanted to be clear.

MR. HENDERSON: I do, but I feel this way, as we are presently constituted I say that, but I say that if we had an independent board

representing the whole potential we would not have a unilateral presentation or unilateral effect.

MR. COYNE: The board would be there?

MR. HENDERSON: An independent board, realizing the full potential. A representative of the independent board would have a greater negotiating position, yes.

MR. ESTEY: What we are saying in a nutshell is that we would like the aeronautical board at these conferences, and not TCA.

THE CHAIRMAN: In another arrangement you would have the independent board there?

MR. ESTEY: And the private citizens involved too.

THE CHAIRMAN: Are you seriously suggesting that the representatives of Canada when they go to these conferences, coming from the Department of Transport and the CBC, are not there to represent public interest?

MR. HENDERSON: No, not at all; we are not accusing anyone of being vicious. I want to make my position clear, the CBC cannot divest itself -- the CBC representative cannot divest himself of his appreciation of his own potential; he knows it and he is building in terms of his own potential when he is advising, and perhaps in all good faith he makes representations having regard to that potential. I suggest to you he does not have the full story and he may make a decision that affects this country which is adverse to the overall picture. Now, that is my picture.

THE CHAIRMAN: What is the interest of the CBC?

MR. HENDERSON: It is a dual interest, that is my point, there is a dual interest; it has an interest in terms of its operations and what it has the ability to do, and it has the interest of the overall picture. My suggestion is that the person who ought to have the overall point of view should be independent of the operation of either side.

THE CHAIRMAN: The CBC is the body that has been charged by Parliament with operating a national system?

MR. HENDERSON: I am not saying it is not acting within its legal rights, the legality is there but the basic structure, I submit, is wrong.

THE CHAIRMAN: I want to know what its interest is; it is not in the business of making things, it is attempting to do for Canada -- the creation of a national system of broadcasting. If that is not public interest I don't know what is. I will agree with you that any representative you selected might go and in interpreting the public interest do something which you would disagree with as being in the public interest, but that is true no matter whom you send.

MR. HENDERSON: That is right.

THE CHAIRMAN: Now, what other interest has the CBC, other than to represent the public?

MR. HENDERSON: It has that duty, the duty is imposed on it, but because of its dual

function there are disabilities in its way in performing to the full extent.

THE CHAIRMAN: I repeat my question, what interest has it other than public interest?

MR. HENDERSON: What interest has it? Well, it has the interest of the CBC.

THE CHAIRMAN: What are the interests of the CBC?

MR. HENDERSON: They are dual, the CBC has an interest apart from the public because it is composed of men who could -- I am not saying they do, but who could be empire building, who could be building a structure for their own aggrandizement, and that is not necessarily in the public interest.

THE CHAIRMAN: That is what we have Parliament for.

MR. HENDERSON: Yes, but we should have an independent regulatory body interposed to enable it to be done perhaps more effectively.

THE CHAIRMAN: You would rather have an independent regulatory body not responsible to Parliament except to be thrown out of office, to keep the public interest of Canada, than the Parliament of Canada?

MR. HENDERSON: Oh, no, the Government of Canada is not going to divest itself of control, I do not suggest that at all. Parliament is absolute, Parliament can if it wants to amend the statute, but we are not asking for the impossible; we are asking for a statute ---

THE CHAIRMAN: You are asking in effect

for a system which will create a semi-judicial body on which day to day changes in public opinion cannot be effectively translated by Parliament in order to represent public interest and divest Parliament from the day to day responsibilities for it?

MR. ESTEY: Mr. Chairman, if I might answer the question with an example, which I think will help to clear the air: the Federal Communications Commission, as you know, represents the United States at international conferences in connection with broadcasting channels and control of broadcasting transmission. The FCC representative on one occasion -- we have this in evidence, but I will bring it out now because it answers the question -- made a proposal which I think was somewhat along this line, that the power of a certain class of station should be 5000 watts, and the Department of Transport then agreed to that. However, the CBC man jumped up and said, "No, one thousand watts", so the FCC said that maybe they should adjourn and let Canada make up its mind. They did adjourn and Canada did make up its mind at 1000 watts. Now, we had a technical submission that the 1000 watts was sufficient for Canadian coverage, but it did not hit the CBC stations, it hit all the private stations of that classification.

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I am not saying there is anything sinister about that. That may be over-enthusiasm on the part of the Corporation. Perhaps the department of transport was wrong in saying 5,000 to start with, but here we have the situation where the Parliament of Canada has not authorized outright nationalism -- in fact, it has seemed sometimes to veer away from it. Here we have the practical step taken by the corporation which in effect limits the coverage obtainable by the private broadcasting industry. We say that the way to bring that to an end is to establish an executive body in Canada which will represent the industry in Canada and this includes the corporation, and will represent Canada in the broader sense, rather than representing Canada in the corporation or whatever it is. I am saying that there are two streams going through the same pipe and it is not logical or fundamentally correct.

THE CHAIRMAN: Well I think we are mixing up two things, on the one hand the independent regulatory body answerable to Parliament, and on the other hand the question of international representation.

MR. ESTEY: There is no question about that. We are mixing it up.

MR. HENDERSON: I think we were at the top of Page 17. "From 1932 onwards, the state broadcasting agency took over the use of all the clear channels allocated to Canada. Even today, only one private station operates on such a channel at high power." That has been changed. My instructions are even today

no class one station operates on such a channel.

MR. COYNE: At high power?

MR. HENDERSON: I think it is out. This is in spite of the fact that the CBC did not and does not fully utilize these. Because of this and the further fact that CBC's operating deficits meant it could not further increase its physical broadcasting facilities, no serious effort was made by Canada to exert its sovereign national right to the use of more channels with or without interference from other countries. Now I have a quotation I would like to read at this point if I may (pause). Perhaps I can read it later Mr. Chairman. I do not find it readily at the moment so I will proceed as follows:

" In the case of radio, Canadian clear channels are not even today used throughout the length and breadth of the land. Five of the seven Class 1A channels are not duplicated at all. One is used but twice, both times by CBC, the seventh twice, both by the CBC. Even in the case of Class 1B channels, two of the five are unduplicated, one not used at all. In the United States, on the other hand - where the negotiating and allocation authority has no interest of its own - there is intensive development, such clear channels being re-used as many as fifteen times, that is in daytime. Each re-use is adequately spaced and protected so as to prevent interference. Moreover, the failure of negotiating individuals to protect the Canadian channels allocated to private stations artificially and unnecessarily reduced

the full potential service of these, making penetration by Canada of U.S. signals easier.

The Corporation is constituted as its Board of Governors. It is this Board which operates its Corporation and which alone or with the assistance of its officials also acts in a regulatory or quasi-judicial capacity. Under the Parliamentary system, Parliament ought to be the custodian of the public interest in any field. While it is sometimes necessary for Parliament to delegate the administration or implementation of its policy to administrative tribunals or like bodies, such delegation ought not to be made to any body having an interest of its own in the particular matter. "

THE CHAIRMAN: Well, you will admit Mr. Henderson, won't you, that there may be a slight difference between American and Canadian power to support radio and television stations?

MR. HENDERSON: Oh yes there is no doubt about that. Nevertheless, we maintain that it does not mean there has necessarily been full utilization here.

THE CHAIRMAN: Well you do seem to suggest that it is because of the failure of negotiating individuals to protect the Canadian channels allocated to private stations, but there are some other differences, are there not?

MR. HENDERSON: Oh yes, I grant that, but we can only look at the results.

THE CHAIRMAN: You can look at realities too.

MR. HENDERSON: Well we can infer the results. And we are looking at results and saying that this is what is happening. We don't think that the results have shown certain things and we have drawn that to the attention of the Commission.

MR. COYNE: But you would not object to the results if the negotiating authority had been, let us say a Canadian telecommunications board?

MR. HENDERSON: Well we would have more confidence in the result.

THE CHAIRMAN: Oh now you say here five of the seven class 1A channels are not duplicated at all. Have there been applications for use by private operators which have been refused?

MR. ESTEY: I understand Mr. Chairman that applications will not be entertained, according to the parliamentary committee reports.

THE CHAIRMAN: When they are clear channels? Let us take 1B channels -- they are not reserved to the corporation, are they.

MR. ESTEY: There is no private operator of 1B channels. There are private Class two stations operating on 1B channels.

THE CHAIRMAN: Well this is getting out of my depth.

MR. HENDERSON: I, at this stage, would like to quote the extract that I was going to refer to a

few minutes ago which has now been brought to my attention.

I find it at the 1946 parliamentary Committee report, Page 156, when the late Mr. Hackett was questioning Mr. Dunton and the following passage is here:

"Mr. Hackett -- To that extent and for that reason we would be taking somewhat less than were allotted to us under the treaty at Havana. Mr. Dunton -- To that extent yes. It would be a very small extent, it would still be occupied as Class 1B. It could later go to 50,000."

But the fact is we did accept less than was made available to us.

THE CHAIRMAN: But just on that Class 1A channel, and I hate to get into these technical things, because I don't know too much about it, if you have a concept of a growing country, and if you have a notion of a national broadcasting service, would you not think that it was not unreasonable to keep the clear channels for that service and not to occupy them, now, because as the country grows, you might need them later -- is not that a sensible approach.

MR. ESTEY: This is a mixture of horse sense and technology. If you can mix them. If it would mean that the asset would waste, then I would say clearly the answer is "No," it is not a good approach. In this sense assets do waste away. We are not accusing anyone of anything, but the United States, by expanding in that area, sets up conditions which we must recognize and we have two choices, one is to use the channel and

remove it later if necessary, but to use it and keep it.

THE CHAIRMAN: If I may interrupt you I may say that I did look into this with the late Mr. Brown who did tell me that in fact first of all, you don't actually use channels, that is to say the channel remains in existence though allocated in Canada, but the degree to which it is wasted is due to the fact that the U.S. occupies similar channels at high power, and to some extent may, in these fringe areas, run into a field that may be occupied by the Canadians. Now is that escapable, if you are going to in fact be holding something for the future, if you have got the U.S. beside you with its potential and its population and its wealth.

MR. ESTEY: Well that is a technical problem but I think it is safe for a layman to make this summary, that these assets are not subject to control unless they are used -- it is like a block of ice -- it is going to evaporate. You can't stop it. The U.S. are going to get a nibble at these channels -- they won't take the whole if it, because that would be contrary to the treaty, but they are given certain rights which they can exercise if we exercise ours and that is a narrow margin.

THE CHAIRMAN: That may be, but my question to you is, is that inescapable, in this way, if the alternative would be to allow private stations to occupy them now, and then, when this country grows later, with a larger population and the national broadcasting system assuming there is one, would

want to use these channels for its own purposes,
-- we will be right back in the same place about
which you complained so vehemently with CFRB.

MR. ESTEY: What we say is that when
the system comes of age, the additional channel
is not there for it. The result would be to allow
someone else to preserve the channel and then let
the national system take it over but there is no
argument about the other aspects of this, that if
we keep the channel by using it then our possible
action is wider because the national service can
either put the private station elsewhere or lease
the private station or have a different kind of
national service but, if you don't put anything
in there, none of these three possibilities are
fully possible.

THE CHAIRMAN: So to put it accurately
it is a choice between two evils.

MR. ESTEY: Yes. It is better to be
called evil than to be ignored -- that is another
way to put it.

MR. HENDERSON: Now to proceed with paragraph
7 on Page 17 ---

THE CHAIRMAN: I don't want to hurry you Mr.
Henderson, but could we summarize this without necessari-
ly reading it -- we have had it many many times.

MR. HENDERSON: Yes I think so. I think I
might merely say that this pattern has been followed.

THE CHAIRMAN: You say there is the trans-Canada
Airline analogy and the Board of Transport Commissioners
for another.

MR. HENDERSON: I think I can best summarize it by reading the quotation from Mr. Howe in 1944 when he said:

"We are doing in connection with aviation exactly what the private radio stations have been asking the Government to do in connection with the control of air waves. The private stations object to the CBC operating a chain of radio stations and at the same time controlling private industry. I might point out that the Board we are discussing tonight is not an operating board. Trans-Canada Air Lines is an operating board but it has no regulative authority and is itself subject to the regulation of the Aeronautics Board. This is exactly the situation which the private radio stations have been seeking in connection with the air waves."

and again at page 3604:

"The judicial functions are directly under the control of the board except that in certain cases there is an appeal to the Minister."

THE CHAIRMAN: You say that it has been suggested that a separate regulatory body must be considered from the viewpoint of its cost.

MR. HENDERSON: There is just one comment I would like to make: I do believe it is given in evidence that if there is a separate regulatory body it would be a legal wrangle. That position I don't want to let go unchallenged, because, in my submission as a lawyer I find that, particularly, one which should not be permitted to remain. It may be that whoever made that representation to you -- and I think it was a professor, as I recall it -- if he has a better way of enabling debate to take place to determine the truth I don't think it has yet been disclosed, because, in my submission, a regulatory body where all points of view are drawn to the attention of the Board, whether it be called a legal wrangle or legal debate or assessment of opinion, it is still the best way of enabling the right course to be developed.

THE CHAIRMAN: I didn't suppose you would be favourably disposed to legal wrangles, anyway.

MR. HENDERSON: I didn't want to let that go.

THE CHAIRMAN: I think we will adjourn there. We will then go to questioning on this part. There is a lot of theory and general statements in this; we have all the precise proposals in the exhibit containing your draft

act; do we take that in connection with the questioning on this?

MR. HENDERSON: I would suggest, Mr. Chairman, that because of the availability of witnesses now that we call Mr. Chandler first so that he can give the particulars of the channel situation, and in that way questions would be largely questions of fact and would be answered by him. We will call Mr. Chandler; Mr. Estey will examine him, and he will be subject to cross-examination.

THE CHAIRMAN: Isn't he only going to deal with one portion of this?

MR. HENDERSON: That is right.

THE CHAIRMAN: We would like to meet Mr. Chandler's convenience if we can, but we don't want to disturb the order of events too much.

MR. ESTEY: We can postpone that until tomorrow.

THE CHAIRMAN: It may be we will get to him this afternoon, but I think before we jump into the middle of the questioning in connection with the technical aspects which Mr. Chandler will deal with, there may be some preliminary outline of the general picture we would want to have. Very well, we will adjourn until 2.30.

--- The hearing adjourned at 12.50 p.m. until 2.30 p.m.

---Upon resuming at 2.30.

THE CHAIRMAN: Now, Mr. Henderson and Mr. Estey, when do we bring out this statute? Are you going to expound it now, or are we merely going to question you?

MR. HENDERSON: We were not going to expound it because we are not dedicated to this particular form. A statute has been drawn some time ago. Mr. Estey is particularly familiar with it, and I think he would be prepared to go through it from the point of view of determining whether it meets the particular industry that is being considered. I do want to make it perfectly clear that we appreciate that the statute itself would have to be given a great deal of thought as to detail. We thought that the starting point would be to have a document.

THE CHAIRMAN: But when you say you are not dedicated to it, I suppose, like any other draft bill, it is subject to debate?

MR. HENDERSON: That is correct.

THE CHAIRMAN: But this, nevertheless, is an attempt to set forth the kind of control board you mean when you are asking for an independent regulatory body.

MR. HENDERSON: That is true, but with the full appreciation that there can be variations in the type of board, the main feature being its independence. There is a typographical error in the bill as it now appears which I should correct at the

outset, and that is No. 6 on page 4. The sense as it is now worded is not clear. The third line from the bottom of paragraph 6, page 4, there is a semicolon after the word "vice", and that semicolon should be a comma. Following that, the wording should be, "who is not a member disqualified to act by reason of interest or of kindred or affinity to any person interested in any matter before the Board." That is the way it should read, otherwise it would be contradictory to the main part of that section.

THE CHAIRMAN: But is this the same draft bill that we had first of all on a confidential basis sometime ago?

MR. HENDERSON: Yes.

THE CHAIRMAN: So it has been in existence for some time?

MR. HENDERSON: That is correct.

THE CHAIRMAN: It has been subject to your study and development in the light of what you are proposing. I am not trying to bind anybody or commit anyone. I am simply trying to get down to specific details. The thing that I have in mind is simply this: it is not enough for us merely to consider the sort of general idea of a separate regulatory body, because we can have boards and boards. If we are going to make a recommendation on this subject we need to make a recommendation for a specific kind of board with specific kinds of powers, and I think what we want to do is to be sure that we know what it is that the CARTB is

recommending as a board; and this is it?

MR. HENDERSON: That is correct.

THE CHAIRMAN: Mr. Coyne, would you like to start the questioning?

MR. COYNE: Yes, Mr. Chairman. Really a preliminary point, I would like to ask Mr. Estey to outline briefly for us the way in which this brief was prepared. What I have in mind is this, Mr. Estey: in your supplement No. 19 and in your supplement No. 20 you make certain representations as to the weight which the Commission should attach to certain representations it has received, and you have suggested that in some cases the representations that we have received on behalf of the associations have not, in fact, represented the views of all the membership of those associations. I think it would be helpful to us if you could indicate briefly in what way the brief was prepared, and how it was submitted to the members, and in what way you sought to ensure that the representations to be made to this Commission were made on behalf of the membership.

MR. ESTEY: Of the Canadian Association of Radio and Television Broadcasters?

MR. COYNE: Right.

MR. ESTEY: Let me go back: first of all, the association has been appearing before public bodies of various types since it was organized and the presentation of the association's viewpoint has

varied very little. I know of no significant change since it was formed. Coming down to this Commission, the Board of Directors met several times and resolutions were passed, some of which have been filed with this Commission, approving the brief as originally filed. Coming down to the rebuttal brief, which is the one you probably have in mind, the Board of Directors met and agreed on what were the principal items to be drawn to the Royal Commission's attention by way of rebuttal, and a committee was established. The committee then met and in detail drafted a rough outline of the reply. That outline was then circulated to all the directors of the association and to a number of other members of the association. That would be about six weeks ago. Then a meeting was held in Ottawa at which the committee met along with the Board of Directors, and a revised draft was approved subject to some new ideas which were then brought out. From all of this came the final draft which was approved by the Board of Directors and which was circulated before this hearing.

MR. COYNE: Was it approved unanimously by the Board of Directors?

MR. ESTEY: Unanimously by the Board of Directors.

THE CHAIRMAN: Was it circulated to the members?

MR. ESTEY: It has been circulated to members, but it was not circulated to members

before it was filed. We didn't wait until the mail had arrived at all the members' stations before we filed it with the Commission, because the pressure of time was very great upon us.

MR. COYNE: You are not suggesting this represents the unanimous view of your members?

MR. ESTEY: No, I want to very quickly say that the word "invariably" does not apply here. There are members in this free association which we are who do not agree, and you have heard from them. We think this represents everyone that you have not heard from, and some that you have, but it is a free association, and if somebody does not like it they can file their own brief. We make no attempt to masquerade or discipline. This brief represents the unanimous approval of the Board of Directors who are democratically elected annually, and it represents the historical approach which has not changed so far as this association is concerned. Does that answer your question?

MR. COYNE: I think it answers it.

MR. HENDERSON: I would like to make this additional statement, that as we conceive it the rebuttal brief is within the policy as set at the annual meeting.

MR. COYNE: Yes. I was perhaps thinking particularly of the rebuttal brief, but also of the main brief. I take it from what Mr. Estey has just said that the manner in which

this was prepared and approved, that it is very similar in that respect to the brief that we received from the Canadian Labour Congress -- much the same processes or procedures seem to have been adopted?

MR. ESTEY: Yes, except that all of our members -- we only have 150-odd -- and it is not the same physical problem. I am not suggesting the Labour Congress should have circulated their brief to the members, but we have done that.

MR. COYNE: You circulated your brief, but you didn't get unanimous support for it?

MR. ESTEY: We got no dissent, but you know the submissions. Incidentally, there is no internal attempt made to prevent anyone from making a submission to this Commission, and those who did make them, we knew all about it. It is not like a lever being sprung, or anything like that. It was just a difference of opinion.

MR. COYNE: I appreciate that.

THE CHAIRMAN: Before you leave that, Mr. Coyne -- we will come to it later in this part -- but I am looking for the criticisms you were making -- criticisms of other briefs not representing the members.

MR. HENDERSON: In Public Opinion -- that is Part III.

MR. COYNE: Part III of No. 16, yes.

MR. HENDERSON: Page 26.

THE CHAIRMAN: What is the one dealing with

the brief of the Canadian Labour Congress?

MR. COYNE: That is supplement No. 19.

THE CHAIRMAN: You make the statement that the Canadian Labour Congress brief misrepresented the views of its members -- misrepresented the aims of the broadcasters and did not accurately reflect the views of the union membership, and the supporting evidence for that is a spot check of 110 people in Hamilton which was not answered by the whole 110, and now you come with your association brief, and it is so, isn't it, that station CFPL in London is a member of the association?

MR. HENDERSON: Oh yes, that is correct.

THE CHAIRMAN: And is there a representative of that station on your Board of Directors?

MR. ALLARD: No, sir.

THE CHAIRMAN: It has been in the past, hasn't it?

MR. ALLARD: Yes.

THE CHAIRMAN: And the London Free Press people, of course, specifically disagree with you on the subject of having a separate regulatory board?

MR. ALLARD: I think they disagree more as to timing than to principle, but there certainly is an element of disagreement.

THE CHAIRMAN: Well, at page 5 of their brief, which is Exhibit No. 181 it says, "In our opinion the creation of a separate regulatory body would seem to be impractical and would duplicate

the present system of national control."

MR. HENDERSON: Am I not right in saying that they said they would not object to the formation of a separate regulatory body? That is the statement I understood was made during the course of discussion on that brief.

MR. COYNE: I think that is so, Mr. Chairman, in my recollection that Mr. Brown said in words similar to that that he did not object to it, but he was not certainly recommending it.

THE CHAIRMAN: But the brief reads, "In our opinion the creation of a separate regulatory body would seem to be impractical and would duplicate the present system of national control." Is station CJCH in Halifax a member of your association?

MR. ALLARD: Yes, sir.

THE CHAIRMAN: Are they on your board?

MR. ALLARD: Not as of the moment. They were fairly recently.

THE CHAIRMAN: And the manager was a former president of your association?

MR. ALLARD: Yes, sir.

THE CHAIRMAN: They disagree with the notion of a separate regulatory body.

MR. HENDERSON: Again, I wasn't here during the course of their presentation, but I am advised they did not advocate a separate regulatory body, they did say, or they did recommend, a change. I am not familiar with the nature of the change they recommended, but it is my instruction they were not in sympathy with the precise situation as it now presents itself. But they did not go so far as to recommend a separate regulatory body.

THE CHAIRMAN: What they did say and it is at page 12 of the brief of Station CJCH :

"Obviously the advocates and opponents of this body are at cross purposes. The public must assume that the publicly- and the privately-owned elements of Canadian broadcasting co-exist as equals. Such is not the case, nor has it ever been so. We are in agreement with the premise that broadcasting is primarily a public trust, that the national system should not be weakened or destroyed. But we maintain that the theory that lies behind the formation of this independent tribunal should not be abandoned. If arrangements could be made whereby the apparent unfairness of the CBC's position could be eliminated, whereby new experiments might be undertaken in Canadian broadcasting without

in any way destroying what we know as the national system, would this not be in the public interest? Certain people, including some members of parliament, are under the impression that this independent regulatory body does, in fact, exist within the present Board of Governors of the CBC. We suggest that this is not so, that the Board of Governors of the CBC, as it is constituted at present, is not given a chance to operate in the capacity of an independent regulatory body. At the present time, members of this Board, who are representative of all parts of the country, give their time without remuneration. Since they meet only four or five times a year to consider the matters before them, they are forced to rely heavily upon advice which they have had little opportunity to digest. Under the circumstances, it is only natural that their decisions are sometimes mere formalities. The Massey Commission noted that, 'if the national system were not to be destroyed, a separate body could do only what the present Board of Governors is expected to do.' They recommended that the Board be enlarged in order to make it more widely representative. To this suggestion we concur, but we feel that other mechanics might be devised which would qualify this same Board of Governors as an independent board."

MR. HENDERSON: Well, there is not a great deal of difference between us on that point and I also would observe there might be something distinct in the phraseology. As a matter of fact, Mr. Macdonald was on the executive of this Association when it made appearances before the Parliamentary Committee and asked for a separate regulatory body.

THE CHAIRMAN: They may have changed their mind.

MR. HENDERSON: If it is a change of mind. It is a little obscure.

THE CHAIRMAN: These are two members of your organization who do not go along with the proposals of the separate regulatory body.

MR. HENDERSON: It is a matter of interpretation and I would certainly not interpret it in that way. They certainly did not advocate it, but they did not oppose it. It is a matter of interpretation, and I submit the interpretation I give is equally capable of being made.

THE CHAIRMAN: I am not surprised in the light of the Association there being some people in the Association who do not go along with the full opinion of the majority and the only point of raising it is the fact that you raised it so specifically when you were speaking of something else.

MR. HENDERSON: We circulated our brief before it was presented to this Commission, and they had ample opportunity of expressing themselves before one or two other briefs were filed.

MR. COYNE: Mr. Estey, I want to go on

with this section where you deal with the separate regulatory body -- Section 16, and I want to call your attention to the statement that appears on page 5, the middle of the page, and the first part of Supplement 17. You say there in the middle of the page, that while there may be a national service in Canada there is not one national system, but two. The two systems are, in certain respects, at certain times, acting together in order to provide distribution for the programmes of a national service. Now, I would like to ask you in what sense you say the private broadcasters are a national system?

MR. ESTEY: Well, first of all, let us go to the section of the Broadcasting Act where it says the Corporation shall carry on a national broadcasting service. The terminology of service and system which has crept into these proceedings, in our humble opinion, too much significance is hung on the two words. If a local broadcaster represents a system, they don't represent a system that is commonly indicated by the use of the word, as, for example, the Columbia Broadcasting System, the American Broadcasting System or the Mutual Broadcasting System. We are a non-connected system if we are a system.

MR. COYNE: Whether you are a system at all.

MR. ESTEY: Whether we are a system depends on words. I don't like to see anything as important as the broadcasting policy for Canada swung around the meaning of the word system or

service.

THE CHAIRMAN: You used the words. You said specifically there is not one national system, but two, and the question is in what sense do you say the private broadcasters of Canada, in any sense of the word, are a system? -- and it is your word.

MR. ESTEY: I am coming to that. I am not allowing a definition -- the word itself means all things to all people. The private broadcaster represents a service which is not provided, apparently, by the Canadian Broadcasting Corporation or we would have no audience. We represent an audience service which we think is proven by the results of the service and by the fact that advertisers buy time on our stations. A national service is used in the Broadcasting Act. Section 8 contemplates there will be more than one service or it would have said "the national service". We say that the word system is, perhaps, not the dictionary use of the word. Service is a better word, and our service is, apparently, useful to the advertiser and the local community.

MR. COYNE: In what sense do you call that service a national service?

MR. ESTEY: Because it goes across the nation.

THE CHAIRMAN: Is there a connection at all between the private stations other than a connection in their trade association?

MR. ESTEY: There is not very much connection other than the fact of this Association and

other than that a national advertiser and does buy time on a great number of stations on one programme in the sense of an advertising programme.

MR. COYNE: If you use this word system, where do you fit in the affiliated stations, that is, the stations which are affiliated with the CBC networks? Do they form part of the CBC system or do they form part of the private system?

MR. ESTEY: That is one of the progeny that this unusual marriage has brought forth, or, if you prefer, call it a partnership which ties in the Dominion Network and the Trans-Canada on one basis or another. Do not say that the Broadcasting Act is a national service, because at times they are not a national service. There is nothing to distinguish these stations from those in the CBC system. So, to that extent, it may play two roles. It is an echo for the CBC and must originate its own services.

MR. COYNE: You would not agree -- now, this is a statement of present facts, not what it should be, but what it is today -- that there is, in fact, today one national system coordinated, regulated, supervised by the CBC in which the CBC networks, partly through their own stations, and partly through private affiliates, perform a function and the local stations in their local sphere provide another function?

MR. ESTEY: No, I disagree with that as emphatically as possible, on two distinct grounds. One, the legal grounds, and the other

the practical grounds. Dealing first with the legal grounds, Section 8 of the Broadcasting Act is the granting section, or empowering section, which says to the CBC you must run a national broadcasting service. Then it sets out about fourteen special headings of granting power for that purpose. Nowhere in Section 8 do you find the power to regulate or control or otherwise deal with private stations, except to lease time on them to cause them to carry their programmes. And then you go from Section 8, thirteen sections later, and you find the Corporation has power to regulate private stations. So the Broadcasting Act never contemplated one homogeneous service; it contemplates two services, or at least, two worlds of broadcasting. World one is Section 8, to operate a broadcasting service, and world two, a national service of every broadcast. I am not calling it a service. Now, that is the legal basis.

THE CHAIRMAN: You don't say, because it happens to be in two sections, the Broadcasting Act does not make these provisions?

MR. ESTEY: Nowhere does it give the power to operate all broadcasting. It operates a broadcasting service and regulates all broadcasting.

THE CHAIRMAN: The Act does give it the power to operate and does give it the power to regulate.

MR. ESTEY: Let us look at the wording of the Act. Surely, we don't have one system of

air lines in Canada, but it is all under one regulation.

THE CHAIRMAN: That is precisely the point.

MR. ESTEY: Trans-Canada Air Lines is a system, a service; CPA is a system. It is all regulated by the Air Transport Board, but that does not make it one service or one system.

On the practical point, where it makes the strongest answer, let us assume that the private stations and the CBC are partners. Do partners compete? Is it fatal to the concept of partnership that they compete?

MR. COYNE: I think the proposition as put here is not necessarily that they are partners, but, in fact, that the CBC is, and is designed to be, a controlling factor.

MR. ESTEY: I think we cannot disagree.

MR. COYNE: You are not suggesting, I take it, from your analysis of the two sections, that the regulations which have grown up by which the CBC has incorporated private stations into its networks, that these are ultra vires?

MR. ESTEY: Oh, no.

MR. COYNE: You simply say in your estimation that the situation was not contemplated at the time of the writing of the Act.

MR. ESTEY: I say it was contemplated that the CBC should have the power to incorporate in the service any private facility they wished to be worked in under their wing. All I am saying is, that power does not illustrate any power in Parliament to set up a single state system, quite the contrary; the Aird Report is quite clear, state broadcasting shall be the broadcasting system, but it has never happened in the parliamentary committees. The Labour Congress, I am glad to see, has come under the spell of our effort, because they now recognize there should be two separate divisions of the CBC. I have every hope, being an optimist, that the Labour Congress will see that there should not only be two separate divisions but two separate organizations.

MR. COYNE: Turning now to your draft bill, passing over the interpretation section and going to part one, which has to do with the constitution of the board, I notice that under this draft it would be a five-man board, the chairman and the vice-chairman would be full-time workers, one would be a lawyer and one an engineer, and there would be three other members to make up the five. Then, I see that this board would have a much broader jurisdiction than merely broadcasting; it really controls all telecommunications, which means, I take it, it would take over a good many functions that are now performed directly by the Department of Transport with regard to telecommunications and other things that are not broadcast?

MR. ESTEY: That is true. (

MR. COYNE: Does that follow -- I think it does -- that this board with the five members would be in large measure, certainly in larger measure than the present CBC, be concerned with technical matters?

MR. ESTEY: Yes.

MR. COYNE: Well, then, I would like to ask you this: why do you feel that such a board of five so constituted and with a heavy emphasis on technical matters, how such a board could properly represent all the diverse and varied interests of Canada in broadcasting matters?

MR. ESTEY: How they could?

MR. COYNE: Yes?

MR. ESTEY: Well, first of all, as a basic premise we believe that the principles of political science and jurisprudence which come to bear on this must find their roots in the technology of this field, and you cannot arbitrarily say this part of the technology of the radio spectrum relates to broadcasting and this part does not. Now, you can illustrate that by what happened with Channel 1 on the VHF television in the United States; they started off with thirteen channels; the board, which is somewhat like the board we have at present, said there would be thirteen. Now, because of the requirements of non-broadcasting, that Channel 1 was locked off. The Department of Transport have certain technical functions which must be continued to be discharged, and we think it would be better for the Government and more successful to have all these functions centralized in one

body. We have quite a bit of authority for that within Canada in aeronautics, and outside of Canada with the Federal Communications Commission; they control broadcasting in the United States and point-to-point broadcasting and all emanations on the radio spectrum.

MR. COYNE: But is it not really true that the reason this board might be able to operate efficiently is because in one sense you are not giving it any jurisdiction in broadcasting matters at all; that is, with respect to the control of programme content? As I read the statute this board is empowered to control advertising and make regulations respecting advertising; there are certain specific statutory things respecting political broadcasts and that in the realm with which we certainly are particularly familiar now after all these months, the desirability of having Canadian content in the programme, the desirability of encouraging live talent, the importing of United States programmes and any regulation to limit that, which was discussed this morning, the reporting on the activities of private stations. Some of these powers are within the powers of your board, so I take it you are suggesting that there should not be any control or regulation directed towards those ends?

MR. ESTEY: Oh, no, not at all. As a matter of fact ---

MR. COYNE: Well, point out where they are.

MR. ESTEY: Let me give you the background

of how this part of the Act was put together. We sat down and took all the CBC regulations under the statute and all the regulations pertaining to the content, the propriety of broadcasting and we tried to put them into this Act. This Act will represent no less control from the point of view of the public than is going on at the present time, but it moves that control out of the CBC and out of the Department of Transport and centralizes it. You will find in this statute, and I should have started there at the beginning, this statute is a homogenization of the Railway Act, the Aeronautics Act, the Broadcasting Act, and enough cement put in to hold these parts together.

MR. COYNE: Well, just on that point, would you point out to me in the statute where, for instance, this board that you suggest possesses the power to protect and ensure the greater use of Canadian talent?

MR. ESTEY: Well, first of all, the board has the power to reissue a licence, if the board promulgates a regulation requiring Canadian content ---

MR. COYNE: But it has not any power to promulgate anything like that, I suggest to you, after a fairly close examination of this Act.

MR. ESTEY: Well, what about describing the conditions as a restriction of ninety per cent of the programming being Canadian content; does that achieve your desire?

MR. COYNE: Is that what you mean, these

regulations should be achieved by placing restrictions on the licence when issued?

MR. ESTEY: When or after, it does not matter how it is achieved, no.

MR. COYNE: Well, then, I ask you this: I think Mr. Henderson admitted this morning that this board has responsibilities to Parliament; it is like other boards in that respect, the Board of Transport Commissioners and perhaps the Air Transport Board. Why do you suggest that a decision of that kind which is clearly a matter of policy, that is, as to whether or not private stations should be required to carry any particular content of Canadian programme, why do you suggest that a board of this kind should be given any power to determine matters of policy of that kind? Certainly the Transport Board has no such power.

MR. ESTEY: The Film Board has a censor board, every province has one ---

MR. COYNE: The Film Board is certainly responsible to Parliament in carrying on all the policies with which Parliament has charged it.

MR. ESTEY: I have in mind the provincial film boards where they censor the films; they are responsible to the legislature; it is in the statute and in the statute the standards are set out. We are not averse to setting up standards; if the board is to be charged with responsibilities, let us follow what the Board of Transport Commissioners have in the railways -- there are standards there. It is not dollars

and cents; they are shown principles to follow.

MR. COYNE: Well, let us go on to the Board of Transport Commissioners for a moment. The Board of Transport Commissioners' primary function, I think you will agree -- perhaps it has two, but one of them is certainly to determine the rates which the railway companies will charge to their customers. That is clearly not a situation that is analogous to the broadcasting field in the sense that no one is suggesting they should have the power to fix rates.

MR. ESTEY: No, but Parliament does delegate to the Board the manner in which they should arrive at the rate and the amount to be fixed.

MR. COYNE: Certain statutory provisions which prescribe the limits within which the Board operates.

MR. ESTEY: That is exactly the same situation.

MR. COYNE: Well, what sort of restrictions, if Parliament on the one hand creates a corporation of its own, the CBC, and charges it with providing a national broadcasting service, if you like -- and I suggest to you charges it quite specifically in the words of the statute -- to provide that service not only to its own stations, but to private stations. Parliament does that as a matter of policy and sets up the criteria to carry out that policy. How on earth could it at the same time place powers in a body which is not responsible to it, under which that body could frustrate its policy, and I put it to

you this way, supposing this telecommunications board which you give the power to control networks, should decide that no private station should be affiliated with the CBC networks, which, under your Act it would have the power to do?

MR. ESTEY: Which it might do.

MR. COYNE: Well, now, surely such power if exercised, and certainly potentially if not exercised, is one which could completely frustrate the policy which Parliament has declared under another statute.

MR. ESTEY: Let me give you a quick and easy answer; the Government of Canada guarantees certain bond issues of the C.N.R. The Board of Transport Commissioners sets the revenues of the C.N.R., Parliament has designated that Board to do that because they can say what the C.N.R. can charge the public, not only for carrying goods and people and express, but telegraph rates. Their gross revenue is controlled by the Board of Transport Commissioners. Now, suppose they set a rate, set a low freight rate, and the C.N.R. thereby could not get sufficient revenue to carry on -- what happens? You have the hiatus you are talking about now.

MR. COYNE: Surely the C.N.R.'s commercial organization that, apart from the years when it has come with a deficit to be covered by Parliament, whereas the CBC is not fundamentally a commercial organization, it is an organization, I put it to you, which is charged with a certain

function and which is given large sums of money that go to perform that function. Now, the effect of this independent board would surely be -- would very much affect the revenue position of the CBC, and thereby prevent it from doing some of the things that Parliament has told it to do.

THE CHAIRMAN: May I add to that, not only affect the revenue but affect its actual power. The point Mr. Coyne put to you, where you have the Government charging the CBC with providing the national programme service or national broadcasting service partly through its own stations and partly through private stations, this board could, in his illustration, prevent any network being formed. You have Parliament in one breath saying, "Here is a body which is supposed to carry out a national broadcasting service" and creating a board which is not responsible to Parliament, which would be able to frustrate that policy. Now, in the other case of the railways it seems to me it is no case at all, because, suppose the rates are set too low by the Board of Transport Commissioners for the C.N.R. to pay its bond interest, then the Government is carrying them ---

MR. ESTEY: Parliament sets up many bodies to frustrate Parliament.

THE CHAIRMAN: Then you are saying in this case they should?

MR. ESTEY: Oh, no, I did not answer the question as put; I regard the question as a statement that I do not agree with. It all

depends on where you sit in this ball park.

MR. HENDERSON: Mr. Coyne's question contemplates two things, the present statute and the new statute.

MR. COYNE: One qualification.

MR. HENDERSON: Surely that cannot be. Our submissions inherently require the change of the existing statute.

MR. COYNE: I have just one point: my question certainly contemplated the present general policy of Parliament, that is a policy setting up the Crown Corporation to perform a function in a certain manner.

MR. HENDERSON: That is right, which contemplates the statute as presently formed under Section 8 of the Act.

MR. COYNE: Not necessarily.

MR. HENDERSON: Well, it is there now.

MR. COYNE: Yes.

MR. HENDERSON: Well, surely there is nothing theoretically at the moment wrong with having two statutes if you allow one integrating body as the regulatory body, the operating body is the CBC; the CBC reports to Parliament in respect to its operation through its Minister, but the policy of the integration is done by the regulatory body. Now, that may have to be explored, but I see nothing inherently wrong with that type of structure.

MR. COYNE: But there is not the structure, for instance, that you have in the hands of the Board of Transport Commissioners ---

MR. ESTEY: We think it is.

MR. COYNE: Oh, surely not.

MR. ESTEY: What about telephone rates -- they fix telephone rates, and the reason it is in the Act in the way of standards is that Parliament cannot confine them, circumstances change, and so they delegate that function. Now, am I to understand you that because they delegate that function to the Board of Transport Commissioners that the Crown can never go into the telephone business?

MR. COYNE: Oh, no, I do not think we are at odds on that at all, but I gather from what you say, just to make sure that I understand you correctly, is that you have no objection to Parliament by specific statutory enactment or the right, directing this board or indicating to this board what the policy of Parliament is, and conceivably such a directive, if Parliament continued to decide that there should be a national broadcasting service performed by a Crown corporation, partly through its own stations and partly through private stations.

that they might conceivably have to direct this board with very great rigidity and within very narrow limits if they wanted to ensure that this board, by its actions, did not prevent the type of operation you have in mind.

MR. ESTEY: Well we draw our answer right from the statement of the right Honourable C.D. Howe when he introduced the Air Transport Board legislation with reference to the aeronautics act in 1944. He said that we are doing in connection with aviation exactly what the private radio stations have been asking the Government to do in connection with the control of airwaves. It was the same man who introduced the Trans-Canada Airlines Act in 1937 or 1938. Never was our case put in more lucid fashion.

MR. COYNE: Except that even Mr. Howe himself is not infallible in all instances.

MR. ESTEY: That is a dangerous statement to make in Ottawa.

THE CHAIRMAN: Let me have your view on this board in existence. Do you still believe that there should be a Canadian Broadcasting Corporation, charged with providing a national broadcasting service.

MR. ESTEY: Well I can answer "Yes" or "no" to that.

THE CHAIRMAN: Well answer it one way or the other.

MR. ESTEY: Well let me see now -- If I had to answer it one way or the other -- --

THE CHAIRMAN: Answer it whichever way

you like, but I don't⁷¹⁰⁴ like an answer yes or no.

MR. ESTEY ; Well, the question involves three dimensions here -- if the Act were passed today, tomorrow the CBC would, no doubt, as a practical matter, have to carry on.

THE CHAIRMAN : Carry on with what ?

MR. ESTEY : If the Act were passed today - we are not asking that the CBC transmitter be put on the block overnight, but the national service, we say, would be integrated under the guidance of this board, and if the board said "Yes, we still require because of our unusual Canadian nature, to have a crown corporation to continue with this national service" then we say fine. That is the determination of the independent board and that is the law.

THE CHAIRMAN : But surely is the question whether or not it should be carried on as a national service ? That is a decision of public policy - that is not a decision for the separate regulatory board to make --

MR. ESTEY : That is where we are not making our case too clear to you sir. The provision of the national broadcasting service may be necessary for a great number of reasons. One reason may be that nobody prior to the establishment of the nationally-owned service was providing the coast to coast service of the calibre which the Government thought the people should enjoy. Now, if the cost of a coast to coast state-owned service becomes astronomically high to the taxpayer, and if to take

the other extreme, the Canadian broadcasting industry has matured and expanded to the point where it could take over the burden, then I suggest that whether the national service should be continued as we now know it, is a decision to be made by the board, having made a study as experts in this field.

I am saying that we have got to adapt standards to the changing conditions in Canada. We are also saying if we can create the proper climate for growth of Canadian broadcasting like every other industry in this growing country will grow, we must do this. We are not saying that we are the same as the United States - we know that we are not. We say that we must let it grow towards its natural economic limitations.

THE CHAIRMAN : You say "Let the growth come first"?

MR. ESTEY : Let the growth come at the same time. That is why we say that Parliament has got to delegate by setting standards.

CHE CHAIRMAN: Let me get this step by step. Suppose you have your statute in existence tomorrow, exactly as you have drafted, now what happens to Section 8 of the broadcasting act. You cannot wait until a year from next week to decide what is going to happen. Something has got to be done on the act right away. What are you going to do about Section 8 of the Broadcasting Act.

MR. ESTEY: I would add a section to the broadcasting act making a bridge between that act, which now becomes the incorporating act of the CBC -- like the Trans-Canada Air Lines Act -- and I put a bridge from that act over to what we call the telecommunications act.

THE CHAIRMAN: Well it is a matter of fundamental policy that the Government of Canada -- after your telecommunications act has been passed, as drafted, will then provide that the CBC shall carry on a national broadcasting service within Canada or not.

MR. ESTEY: It will put that power into the telecommunications act and will leave the corporation incorporated.

THE CHAIRMAN: But there is no place in the whole, carefully drafted act, which would do that.

MR. ESTEY: No, because I am not destroying the corporation. I am not touching the corporate sections of the broadcasting act.

THE CHAIRMAN: All right then. There will be a statutory provision which says the corporation shall carry on a national broadcasting service, will there?

MR. ESTEY: Subject to the XYZ act.

MR. HENDERSON: As defined by the statute of the board.

THE CHAIRMAN: Where does it say that?

MR. ESTEY: Well that would be in the Canadian Broadcasting Corporation Act. I realize

that this will be qualified.

THE CHAIRMAN: So that the function or the concept of the national broadcasting service will be vested in this board.

MR. HENDERSON: Or in the statute where it is created. The policy of the act will be set out or the conditions of the operation will be set out in the incorporated act.

THE CHAIRMAN: Then the Parliament is done with it.

MR. HENDERSON: Up to that point yes, but there is nothing to prevent Parliament from amending that statute at any time it likes.

MR. ESTEY: As a matter of fact, it controls it even more directly, because this impasse can happen. For example, let us say that it is decided that the CBC must carry on as it is today and it must expand that service 25%. Well the corporation has to go back to Parliament for money and if the Parliament will not give the money there is an impasse. We anticipate we might be faced with this.

THE CHAIRMAN: We did not get to that one yet.

MR. ESTEY: Well I have made reference to the C.N.R. bond, which was an impasse so far as the Government is concerned in the matter of freight rates. Here is a case where you have the crown financing one of the two rail systems with the rate set by an independent tribunal.

MR. COYNE: Just on that point for a

moment, and we might be able to conclude it. Supposing you have a situation as you have in the railways or, even in the air transport industry, where you have certain publicly owned facilities, with those facilities being specifically charged with forming a national service, and where those facilities are operated on a commercial basis in competition with other people operating on a commercial basis. Then I suggest you have one situation which, in this country, we have met in at least the railways, with the transport board, and in the case of air transportation, with the air transport board, where you have a crown agency, specifically charged with providing a service and providing it with large sums of money to provide that service -- incidentally, deriving a certain amount of income from commercial sources, but primarily charged with rendering a service and with being provided with funds to provide that service. Now what is the purpose -- why should Parliament in such circumstances delegate a five-man judiciary body -- essentially a judiciary body -- the task of determining what the policy should be in this field?

Why is it not properly a matter for determination by Parliament itself -- and its creature? I suggest to you that it involves a decision on policy which is a matter for Parliament or its creatures and is not a matter which is properly justiciary, if you like, by what amounts to a court.

MR. ESTEY: Well, that if I may say so, is a classic description of the administrative tribunal as against the modern description. First of all, who is the creature of Parliament? The board is as much a creature of Parliament as is a crown corporation.

MR. COYNE: Or is the Supreme Court of Canada?

MR. ESTEY : Or is the Supreme Court of Canada. Or, for that matter, is any other body set up by statutes passed by Parliament. So, therefore, nobody is nearer to the crown or further from the crown than anybody else so created.

Before developing that further you said that the corporation incidentally derives some money from commercial enterprise. That is fine for somebody who can afford to say it, but, if you are rubbing shoulders with an incidental function it is not incidental. That is the side of the moon that we see.

MR. COYNE: Well you are not suggesting that the private stations cannot afford it.

MR. ESTEY: No I am not saying they can't afford it on the broad issue, but we are wondering whether the ipublic can afford it.

But to answer your question why should they delegate this power. This goes to the root I suppose, of modern legislation -- how much can Parliament delegate. Here is delegating to the executive or delegating to a creature of its own -- these are big issues. I don't know whether it is

presumptuous on our part to try and answer it, but let me say this, in broadcasting you have one of the most dynamic fields in the jurisdiction of Parliament. It is changing faster than any other field that comes to mind.

Unless you set certain standards, certain lines of advance out, the industry cannot develop. It cannot develop on a lay-on lay-off basis. You must have long standing principles and ethics. Other countries have recognized it and we have recognized it in other fields in Canada. I say you have to put this in some form -- I don't care what you call the act you put them in, but what I say is whichever way you do it, these standards must be maintained. We didn't give the C.N.R. the power to settle these freight rates, nor did we let the Trans-Canada Air Lines say where they must fly. We said to Trans-Canada Air Lines "you have private enterprise, but yours is not a private service" -- there was an argument on this but let us say this was the outcome. "You are going to provide transportation facilities through Trans-Canada Air Lines, but no one gave the internal power to control or regulate the air industry, or the external power to regulate Canadian aviation. Parliament did delegate that -- Parliament does not sit every day and beside what is in the public interest -- they put that in the hands of the board. Now the board has certain lines of advance which Parliament can look at, and if it disagrees with them, then all it has to do is repeal

it and that is the end of the board.

They review just as much every year on the Parliamentary Committee on the C.N.R., and you have an administrative tribunal which is a combination of the executive function, the judicial function, and the legislative function, depending on which side you look at.

They execute in the sense that they carry forward municipal acts or actually they are issuing bits of paper with a license on them. They legislate when they pass board rulings which we think they should do, and they adjudicate when two people apply for a license and they have to distinguish between them, or they have to deal with a complaint about a breach of an operating rule.

That kind of function didn't exist in the 1800's, and we have no background in Canada until you get into the 1900's and very little background until you get up around 1935. However, from the day of the Royal Commission you have in Canada an advance in administrative law which justifies and in fact demands a combination of power to give continuity and flexibility to expanding federal economy.

Now under a unitary economy, not perhaps in the back country exactly, but in the country areas with the proportion of population growth - and on top of that superimposed the new electronics industry - it is very unrealistic to us to say that you have to centralize everything in an operating corporation and you must keep all the rules

in this way -- it is expensive - it is backward
and we are not keeping astride with the rest
of the country.

THE CHAIRMAN: At any rate, Mr. Estey, you are proposing that Parliament should presumably continue the CBC for the purpose of providing a national broadcasting service and that it should establish a separate regulatory board to spell out what this national service should be: that is your proposal?

MR. ESTEY: It is the proposal. I don't wish to quibble on terminology. I accept that as a statement of our proposal, but as a sort of atmosphere to that let me add that it does not really much matter whether the standards of the national service are settled in the incorporating Act of the CBC or in the Board Act. What does matter is that the CBC beyond its operating sphere should be altered, and the Board should carry out the functions beyond the operating sphere. Perhaps I have not made that too clear, but the idea behind it is that we are not trying to abrogate the national service. All we are trying to do is two things: we are trying to get maximum growth in the private broadcasting industry, and we are trying to get maximum utilization and acquisition of Canadian national resources in broadcasting.

THE CHAIRMAN: Are you strictly right in saying you are not trying to abrogate the powers? It seems to me that in a great many things you have been suggesting you are suggesting

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that service should be cut down?.

MR. ESTEY: I wonder what the Chairman has in mind as an illustration of that.

THE CHAIRMAN: We will come to it later in the questioning, but there are many places where I think you are making suggestions that things should be less than they are today.

MR. ESTEY: Those are more in the light of the taxpayer -- how to save some money. We are not afraid of CBC competition -- not in the slightest. Secondly, we have no quarrel with the fact that Canada, because of its spread, requires some national expression that is a little different from the densely populated countries of Europe, but when I have said that I have said everything, on the CBC. What we are saying is that the present system does not allow Canadian enterprise in broadcasting to grow and expand the way Canadian enterprise does, has and will in other fields.

THE CHAIRMAN: It has done pretty well.

MR. ESTEY: Considering the limitations, it has done remarkably well.

THE CHAIRMAN: And from the standpoint relative to the rate of growth in the United States, having regard to the difference in our wealth and population, the growth of television has been probably the fastest growth of television in the world.

MR. ESTEY: We haven't got one-tenth of

transmitters, which is the normal ratio; we haven't got one-tenth of the radio transmitters.

THE CHAIRMAN: Well if you count them up it is just about exactly one-tenth.

MR. deGRANDPRE: There are 359 television stations in the United States, and we have 36.

MR. COYNE: Those were Mr. Finlayson's figures.

THE CHAIRMAN: Yes, we were told by Mr. Finlayson there were 359 television transmitters in the United States and we have got 36. Can you get any closer than that, Mr. Estey?

MR. ESTEY: Well, I may be wrong. There was a telegram here, and I may be wrong and I will let you know if I am. This is from Mary Jane Morris, secretary, F.C.C., Washington, D.C.; 3.35 p.m., the 7th of March, 1956. There were 2,964 authorized AM stations -- that is about 3,000. How many Canadian AM stations are there? One hundred and seventy-five.

THE CHAIRMAN: We were discussing television, not AM.

MR. ESTEY: I will come to that, but I want to make the most of my telegram here. 591 authorized commercial television stations, 485 operating as of that date. So, there is a construction lag there, but let us say that is 600. The ratio is pretty well the same -- about half mast in radio and television. 37 authorized and 18 operating educational TV stations. 552 authorized and 539 operating commercial FM stations.

131 authorized and 414 operating educational FM stations. I don't like to be promoting the American side of it, but I am saying that our Canadian industry is being held back, and it is amazing to me that we have gone so far ahead as we have when you consider that since 1929 there is the statement which says, "If you put any money in here you will not get it back from us". In the light of that they have put up transmitters, and built studios, and hired people. In 1932 the Aird Commission came along and said we should have what is in Germany and England; on page 2 there is a remarkable reference to Germany. In the light of the 1932 Act we still have a Canadian industry. What would happen if the lid was taken off and we were allowed to grow and operate channels to the full Canadian entitlement?

MR. COYNE: Surely the reason we have an industry, and the reason we have people in the private broadcasting field, is that it has been a profitable field in which to operate?

MR. ESTEY: Yes, and I would like -- I am not saying anything about the word "profit" at all. That is the basis of Canadian success. "Commercial" has had an unsatisfactory connotation in a lot of circles.

THE CHAIRMAN: The system of which you complain very vigorously has, in fact, enabled the private broadcasters to do very well.

MR. ESTEY: Well, what do we mean by "very well"? If one drives a Cadillac, or if they all drive Cadillacs, that means they are doing very well, but if we have only 150 stations when we should have 500, are we doing well?

THE CHAIRMAN: Maybe the 150 stations are doing better than they would if we had 500.

MR. ESTEY: If they are, then my argument is really true, that we should have wide open competition; but Canada is the one that suffers -- not the 150. As a matter of fact, the 24 private television licensees should be as happy as can be to leave things as they are, because they have a monopoly. We think that monopoly is wrong.

THE CHAIRMAN: You are getting to another point now, and we will come to that.

MR. ESTEY: The public suffers. The station owner is doing all right, but the public suffers.

MR. COYNE: Just going on to some of the other provisions in the Act, Part II, you set forth the functions and powers of the Board; section 18, "The Board shall: (h) control the proportion of time that may be devoted to advertising in any broadcast programmes and control the character of such advertising; provided that nothing in this Act shall be understood or construed to give the Board the power of censorship

of any telecommunications including broadcasting and no regulation or condition shall be promulgated or established by the Board which shall interfere with the right of free speech by mean of telecommunications." Could you elaborate a little on what you mean by the right of free speech and, in particular, whose right do you have in mind?

MR. ESTEY: Well, that is also a big field. I think Mr. Chaffey has written a 450-page textbook on this, and purely from the point of view of economy of time, I won't attempt to recite the textbook, but the sense of the thing is that in a modern world, in a democracy, this is one of the most difficult things to define and ensure. I think if you will look, Mr. Coyne, at some of the European broadcast statutes you will find there is no guarantee of freedom of expression in State-owned systems. We put this in because it seemed to us a rather shocking omission. It is no coincidence that it is not in any of the totalitarian government statutes. If you didn't put it in, no doubt in Canada, so long as the common law is the way it is, you would have a fair protection, but it seems to us that anyone who holds a license to broadcast should be under an obligation to set out all sides on any point.

MR. COYNE: I don't think that is stated here, but I would like your views on it.

MR. ESTEY: It is draftsmanship you are getting at here. "Freedom of expression" --

I don't know how you would guarantee it in a statute. We merely state the principle, and perhaps we should say they should make regulations expressly on that.

THE CHAIRMAN: But as you have it drafted you say, "Nothing in this Act shall be understood to give the Board power to make a regulation or a condition which will interfere with the right of free speech." Surely, it is a right of free speech to make a political broadcast 48 hours before an election; surely, it is a right of free speech to do nothing but advertise. However, right within your own statute you have got both these restrictions.

MR. ESTEY: We have assumed -- perhaps wrongly after what we have heard today -- that free speech has a meaning in law. It means free speech within the limits of propriety and the normal laws of the land. This is a section which is to give them power to pass regulations. We don't try to delineate those regulations.

THE CHAIRMAN: There is provision for advertising.

MR. ESTEY: Again, if the regulations said, "Thou shalt not advertise vacuum cleaners", the Hoover company^{would} say, "We have lost our right of freedom of speech". But, in the cases on freedom of speech, in the judicial sense, that is not the theme, and we are just adopting that. We are saying you cannot regulate a political

party out of the air; they can regulate them all. They cannot regulate one industry.

THE CHAIRMAN: You don't say that no regulation shall deny freedom of speech. You say "Shall interfere with the right of free speech."

MR. ESTEY: Well, we will be glad to take anyone else's word on the point. All we are saying is that the Federal Government because of the constitutional rights of the provinces, and all the other delicate matters, cannot start passing acts on freedom of expression to run constitutional problems or anything else. We will settle on any terminology. In fact, you can take it out as far as we are concerned. It seemed to us, as conscientious people, that you should not put something forward that is not--

THE CHAIRMAN: Well, what we are concerned with is finding out what you think this Board should be able to do, to know how far that Board is restricted -- and this is no doubt a restriction on that Board. Surely, in the present regulations which, for instance, require that certain advertising shall not be carried at all -- and you know the provisions I am referring to -- there are provisions that you can have only limited kinds of speech as to inviting donations and subscriptions. That certainly interferes with the free speech. We have a provision that there shall not be advertising content in the newscasts. It may be good and sufficient, but it does interfere with the freedom of speech in the newscasts.

You are putting a restriction there which can be invoked one thousand times a day for every regulation that is put in by this Board.

MR. ESTEY: Well, perhaps it would be sufficient then to satisfy all concerned that that section, those words, do not represent the keystone of our thinking on this Act and if those words went down in this discussion and were written down that would be fine. It seems when they were drafting the statute, because of the Federal Government's constitutional position and because of the obvious involvement of the freedom of expression in broadcasting it was felt there should be some guarantee and that the classical term, freedom of expression, should appear. It is not in issue with us. It is something put in to complete the picture.

MR. HENDERSON: I am sorry to come back to it but there is one point and before leaving it I would like to pick it up and that is what seems to be inherent in your questioning as to section 8. That is, this policy of parliament has expressed in that section that the CBC is charged with defining a national service. It says a national service and, as we say, that enable^s the CBC to carry out its operating functions, which is going too far, we say, and that parliament here is setting out a policy that the operating CBC should define a national service. We don't think that is so good. It seemed to me to be inherent in your question.

MR. COYNE: I was not assuming the permanence of section 8.

MR. HENDERSON: Either the permanence or what it is today, because we don't consider it goes that far.

MR. COYNE: But, presumably, if parliament wanted to go that far they could amend section 8 to make it specific.

MR. HENDERSON: I do want to point out we don't consider that it is an expressed policy of parliament giving the CBC the power to define a national service, nor ought it to be, because an operating arm should not have that charge. There should, surely, be some body with perspective to determine how that operation should take place.

THE CHAIRMAN: You say there should be somebody defining this national service?

MR. HENDERSON: That is right.

THE CHAIRMAN: Leaving the technicality aside, you are suggesting that, basically, this would be an independent regulatory board.

MR. HENDERSON: That is correct.

THE CHAIRMAN: Isn't it true, that the kind of national service this country may want to have is something that depends on pretty wide contact with public opinion?

MR. HENDERSON: Yes.

THE CHAIRMAN: Now, it may not be the most perfect thing, but at least, they do try. At present, they have a board which is now doing this, and it comes from all parts of Canada representing different activities in Canada and so on.

Do you think such a board as that, widely representative and so on, may not be a better body to determine what the public wants in a national policy than a permanent group of five men, two of whom are compelled to reside in Ottawa, one must be an engineer and another a lawyer and the three others, presumably, living nearby. Is that the right kind of a board to determine a national policy?

MR. HENDERSON: No, on the contrary, I say it is fundamental the determination of a national policy must reside in parliament and parliament must define national in terms of the statute it creates, within the framework of the statute as defined, the board must operate. I do believe there is a great advantage having the board composed of a chairman and vice-chairman with one clothed in judicial clothes and one clothed with engineering ability because there unquestionably will be technical problems arise. From that point I can agree there is an advantage in as widespread representation as possible. As far as the number set out in the particular statute as the considered representation. We adhere to the principle it ought to be widespread representation and if the statute, as we have read it, does not fulfil that test, we are quite agreeable, or, we are urging the principle of representation be accepted.

MR. ESTEY: On this question of the Board

of Governors there is another aspect, it seems logical that a temporary board or a board that meets occasionally residing across Canada and who also adjudicate upon highly technical matters which are becoming more involved every day must be at a disadvantage. Here we have a board which convenes very infrequently, informally, untrained in the work -- they cannot be trained under the definition of their appointment yet they are controlling the expenditure of -- how many millions -- is it \$40 or \$50 million now and who knows how much it will be five years from now. Both systems have weaknesses but we think the balance is in our favour.

On the question of Parliament relegating standards, section 328, subsection 5 of the Railways Act sets out standards.

Notwithstanding the provisions of section 3 the powers given to the Board under this Act to fix, determine and enforce just and reasonable rates, and to change and alter rates as changing conditions or cost of transportation may from time to time require, are not limited or in any manner affected by the provisions of any Act of Parliament of Canada, or by any agreement made or entered into pursuant thereto, whether general in application or special and relating only to any specific railway or railways, and the Board shall not excuse any charge of unjust discrimination, whether practiced against shippers, consignees, or localities, or of undue or unreasonable preference, on the ground that such discrimination or preference is justified or required by any agreement made or entered into by the company.

That is the only standard given by
^{they}
 Parliament and ~~are~~ of utmost importance to the
 country as they are your main arteries.

MR. COYNE: With respect, what they are
 regulating there, is the price that the railway
 companies are to be permitted to charge their
 customers.

MR. ESTEY: That is right.

MR. COYNE: They are not determining
 national transportation policy.

MR. ESTEY: Or are they? Why aren't
 they?

MR. COYNE: In what respect are they
 determining -- do they possess the power in that
 field -- in what respect are they determining
 national railway policy?

MR. ESTEY: I suppose whichever one of
 us asks the question first has the other one on
 the spot.

MR. COYNE: Fortunately, Mr. Estey,
 I am in the position of being able to ask the
 questions?

MR. ESTEY: He who controls the purse
 strings control the home. And in the railways
 the same is true. If a national transportation
 policy does not depend upon vital and consistently
 equitable freight rate structures then we are
 wrong but, we think the key to the transportation
 policy of Canada is there and I think the government
 has pronounced that very thing time and again when

they sat at recent inquiries.

THE CHAIRMAN: Have we in Canada any body charged with providing railway services to the country by law?

MR. HENDERSON: May I answer that? I submit we have no such body. As for the CBC that is, I think, an interpretation of section 8 that they are to provide a national service. Provide a national service in the sense, I think, defining the scope of all operations in this country.

COMMISSIONER STEWART: No matter how you define it the original responsibility is there for CBC which it is not in the operating of either TCA or the CNR.

MR. HENDERSON: They, in fact, have an obligation of providing an operating arm and they have the power of the regulations of private broadcasters, that is true.

COMMISSIONER STEWART: Apart altogether from the regulations, is there not an inherent responsibility placed on the CBC and there is no such responsibility, as I see it, on either TCA or the CNR. So when we start to compare the CBC with either TCA or CNR we are taking two or three bodies that are not comparable in that respect.

MR. ESTEY: That is right. We are not here to try and fool anybody and with that observation we agree. There is not anything quite like broadcasting. But, does that mean we have

to depart from all the principles because of some characteristic which is different?

COMMISSIONER STEWART: I am trying to see whether you agree with me, at least, under section 8 of the Act there is a responsibility placed on CBC?

MR. ESTEY: There is another answer to the problem and that is to say that there can be no hard and fast rule. However, the Board or Corporation should have its policy, from time to time, laid down by the Governor in Council. There are a dozen variations as to how the policy can be adjusted to the rolling times. Firstly, there are more parallels between control of radio and broadcasting generally and airlines than there are dissimilarities. In airlines we could function without a coast to coast service. We could in radio. Parliament has decided we would have both. Both have been incorporated as a Crown corporation. The analogy is much closer with TCA than with the railways. Parliament backed the airlines but didn't back the railway.

MR. HENDERSON: My point, Mr. Stewart, is there is no definition of what constitutes a national broadcasting system.

COMMISSIONER STEWART: That is correct.

MR. HENDERSON: That is my point. Again I submit, as I submitted earlier, the statute is a clear definition of an operating arm and that organization which operates should define the scope of the circle.

THE CHAIRMAN: Except that the other sections of the Act have to be read along with it and the other sections of the Act do, in fact, give the CBC, at the moment, power to make regulations, and power to prohibit and in that way create a national broadcast service in which programmes are produced and sent out partly on their own stations and partly on private stations.

MR. ESTEY: That is the result, there is no doubt about it.

COMMISSIONER STEWART: You have a body charged with the responsibility, and who are bound to carry on that responsibility, and it seems to me they must have some authority whether they use that authority properly and in the best interests of the public remains to be seen. It seems to me they have to have some authority to carry out that responsibility.

MR. HENDERSON: Our submission on that point is this. That that section is not sacrosanct in any way.

THE CHAIRMAN: Let us assume for the sake of argument it is the intent of Parliament that there is to be a national broadcasting service such as we have today. Now, I am not talking about the mechanics; I am talking about the result that is sought to be obtained. Parliament says in effect, "We want to have national programme production, we want to have these programmes carried throughout the country and we are not going to afford the building of a chain of stations across the country; we are going to have to do this through private stations who have grown up with this task being part of their responsibility; now, we are going to keep that." Now, obviously if they have to have the CBC to produce programmes, how is the CBC going to get those programmes out on that system that you are talking about.

MR. ESTEY: On page 10 in the draft Act there is the power to require the private stations to carry the programmes of the Corporation.

MR. HENDERSON: Apart from the draft Act, in principle again, we see nothing wrong with it; we urge that the independent board would be a board to decide how far that should or could go, how far it would be practical to go on the basis of a hearing where the CBC would make its representation.

say the job of providing the national programme service, the national broadcasting service, would be vested in the independent board?

MR. HENDERSON: Well, the determination as to its scope and the way in which it should be done, yes, but the actual operation would still be in the hands of the CBC

THE CHAIRMAN: Yes, the responsibility---

MR. HENDERSON: The determination would be in the hands of the board.

THE CHAIRMAN: The responsibility for getting this out would be in the board's hands?

MR. HENDERSON: That is right.

COMMISSIONER STEWART: On the other hand, if the CBC or the Government were to carry out a national broadcasting service as it is today, then I think you have to tighten up this Section 19 because your separate regulatory board could stop the carrying of programmes by certain stations, which would not give the scope necessary. In other words, it would either be definite as to what is used on the private stations or there is going to be a certain amount of rigidity either in the instruction of the Government to this separate regulatory board or in the Act itself, so you are going to bind it up with a degree of rigidity that you do not have today, where today it is something that is at least flexible. Would you agree with that?

MR. ESTEY: I would agree with that. There are certain rigidities, there are certain certainties that are set up, and I think the difficulty we are up against is we are trying in Canada to reconcile some almost irreconcilable things.

One thing we are trying to do is that which the Prime Minister mentioned, and we have it quoted on page 43 of Supplement No. 16. We are trying to say that private enterprise should be allowed to find its own level; we are also trying to say that Canada must have a national service, whatever that means. How are we going to reconcile the two things? We say that by this method it is not reconciling what we are proposing to do, which is to get the nearest parallel we can find in our community and delegate through Parliament to that board the principles upon which Parliament wants the broadcasting industry to develop, and then we are going to allow the broadcasting industry to find its level under that board of the Crown, to provide a national service on behalf of the Government so long as it is necessary.

THE CHAIRMAN: Well, let us stick to this question of getting the national programme service out and nothing more; let us stick to one thing. Am I right in the question I asked you some time back that you were suggesting that the responsibility for getting this programme out would be vested in the new independent regulatory board?

MR. ESTEY: Yes.

THE CHAIRMAN: Then you would have a situation where you would have an independent regulatory board charged with this responsibility and the function of the CBC would be to produce programmes?

MR. ESTEY: Yes.

THE CHAIRMAN: Well, how would that situation be different to the situation that exists today where you have a Board of Governors representing all parts of Canada who are charged with the responsibility of getting the programme service out through certain powers, and you have a programme-producing group, and you cannot tell me for a second that -- are you not right back where you started from?

MR. ESTEY: We do not think so because we do not think the present set-up recognizes some things; it does not recognize that the taxpayer is paying for a lot of things which private industry should and could pay for. Secondly, it does not recognize that the level is below what it should be. Thirdly, it does not recognize the complex technology surrounding these complex decisions. Fourthly, it does not recognize that these resources of Canada are not God given and God assured; we have to stake our claim and hang on. Those four things are not recognized in the present set-up.

THE CHAIRMAN: You say they might be?

MR. ESTEY: We think they would be.

THE CHAIRMAN: What makes you think these so-called reliefs would be recognized by another body than the Board of Governors of the CBC who are now responsible for the public interest?

MR. ESTEY: A lot of it depends on how much you recognize of the philosophical side rather than the technological. We say the Board of

Governors is not qualified to make technical decisions. We have evidence of that, that Canada is in conflict on these issues -- that is an external thing, and it is continuing now internally. We say that they are asked to perform an inhuman task; they are asked to decide whether A or B should have a licence in an area where the Corporation itself is operating. Why do they want competition?

THE CHAIRMAN: Would not your independent board have to decide whether A operates or B would get a licence and take into account the existence of the CBC?

MR. ESTEY: Yes, but they are not bargaining the operating end ---

MR. COYNE: You said the independent board was to have the responsibility for getting this national programme service out. Is that not exactly the responsibility the CBC Board has and the responsibility which either board would have to take into account when considering an application from a private group for another outlet?

MR. ESTEY: Well, it is a matter of rules, if the CNR want to abandon a line and the Board of Transport Commissioners do not want them to, who wins? The Board of Transport Commissioners wins.

THE CHAIRMAN: Well, if the CBC operating officials want to abandon -- you say the governors do not know anything about operation and the CBC officials want to abandon a station and the Board of Governors decide they should continue it, who wins?

MR. ESTEY: First of all, I do not want to be in the position where the Board of Governors -- I say it is a phenomena, it would be quite a remarkable phenomena, but as to who would win, the independent board would win.

MR. COYNE: Just going on to the next section of your statute, paragraph 3 on broadcasting, you have already provided that they would have power to control networks and prescribe what is to be done in the event of a dispute. Paragraph 25 says:

"Upon the failure of the Corporation and any broadcasting station to agree upon the programmes of the Corporation to be broadcast over such station or the compensation, if any, to be paid by the Corporation for the use of such station, the board shall, after hearing the representations of the parties interested, determine the programme or programmes of the Corporation to be broadcast by such station and fix an amount which in the opinion of the board is fair and reasonable as compensation therefor, and such amount shall be paid by the Corporation to the licensee ---"

Does this contemplate in your mind that this is carrying on programmes by private stations by general agreement between the two on network arrangements and payment made by the CBC to the private stations in contrast to the present

situation where they are not paid?

MR. ESTEY: Well, whether they are paid or not is a matter of policy for Parliament to decide. This Act contemplates they be paid, but they might be paid \$1 or they could be paid \$100, our case does not sink or swim, we do not think, on the question of whether the stations are paid by statute or not.

MR. COYNE: I am not suggesting it does, but after all this Commission would be concerned with the practical effects of any recommendation and the manner in which any recommendation would work out, and in particular I would like you to expound briefly, if you would, in what manner the board would go about determining what would be fair and reasonable compensation.

MR. ESTEY: Well, to begin with, it would only be to insist that the station be paid.

THE CHAIRMAN: As it is today?

MR. ESTEY: Yes, if they were sustaining, and it is in the definition of national service, then the station should not be paid. Now, as to how much they should be paid, sitting here in 1956 you cannot answer that question for much further ahead than the rest of this year.

MR. COYNE: No, but is this some sort of situation as is found in rate-fixing boards, that is, for instance, would not the CBC generally say to the private station, "We are not going to pay you anything to carry our programmes", and the private station would then go to the board and say,

"We believe we should be paid". Then, generally on what sort of basis could the board determine that; could it figure a rate of return on capital and would not the private station have to go before the board with its financial statements?

MR. ESTEY: It would be just like an advertiser on a network, the circulation is the basis of the charge, just like with newspapers. The newspaper does not go and give its financial statement to show why it is entitled to more money than any other.

MR. COYNE: But in this situation the CBC has a large call on the taxpayer for public funds; any such order of the Board would simply increase the amount of money the CBC have to get from the public in order to pay this station or would reduce the service which the CBC was able to give to the public of Canada to increase the profitability of private stations.

MR. ESTEY: You are assuming something we do not assume, and that is ---

THE CHAIRMAN: You are proposing cutting down CBC activities?

MR. ESTEY: The question presupposes that.

THE CHAIRMAN: Well, do you suggest it?

MR. ESTEY: No, I do not. I say that is something conditions are going to have to adjust as you go along.

THE CHAIRMAN: Does not section 25 amount to a complete change in the present system,

instead of a situation whereby programmes are produced by the CBC and are carried by the private stations that appear to carry such things as need be, but I think it is fair to say we have plenty of evidence that most of this arrangement is worked out by agreement, and you are not proposing that that system should be abandoned and the CBC should produce the programmes and the private stations should, generally speaking, be paid for them.

MR. ESTEY: No, not at all. We say now we are paid today for something we carry, and we say the Board is in all probability going to follow that course now as to how much is going to be paid. I would say they must go through some process analogous to the rate-fixing process of the various boards. It is not fair to assume that it is going to cost the taxpayers more because we do not know how much that national service will be related this way, we do not know how much network time will be carried by the private stations without charge.

Maybe this is a very economical way of doing it - we think it would be.

THE CHAIRMAN : Except that if for example, all the private stations decided that they want to be paid they could hold up all the CBC programming for quite a while.

MR. ESTEY : Under Section 25 the board may, by order, require the broadcasting station to broadcast any programmes which the board decide is necessary in the national interest.

MR. COYNE : Is an order of that kind appealable ?

MR. ESTEY : Appealable - yes.

MR. COYNE : Supposing a programme was coming out next Tuesday - what happens to the programme, then?

MR. ESTEY : If they can't? It is a practical problem. . . If the programme was one of emergent nature I think there should be a distinction made, but if it is a programme that is a routine programme, surely the operating organization - whether it be the CBC or not - should be able to tell in advance what it is going to do. Undoubtedly there should be an emergency measure in the act which allows the board to say it should be done and if you want to appeal you can appeal it afterwards.

THE CHAIRMAN : Of course, with compensation.

MR. ESTEY : Yes, or the advisability if you want to stop them from doing it again.

MR. COYNE : Then going along to the final page - then, section 41 - to make sure that we are clear on this point - this statute repeals the whole of the Radio Act and really the regulating policies of the Canadian Broadcasting Corporation - the Canadian Broadcasting Act?

MR. ESTEY : Yes, but not section 8 you will notice.

MR. COYNE : No, but specifically to make sure that I understood one of your earlier answers -- there is no precise power in this Act under which the board - your board -- would be able to make regulations as to the greater use of Canadian talent and the import of United States programmes?

MR. ESTEY : The import of U. S. programmes - yes, that is controlled as to the bringing over of live programmes on the networks---

MR. COYNE : Pardon ?

MR. ESTEY : There is the network control section which would cover that, I think.

THE CHAIRMAN : You can bring it in on the network ?

MR. ESTEY : "Affiliation of any radio and broadcasting station with any network, and so on"

MR. COYNE : But actually I think that the burden of the representation bears out the fact that there is far more of the recorded or preserved type of programme coming in than live programmes. This would not affect the

importation, or rather there is no power in this board to make regulations controlling the importation of United States preserved programmes, or any other preserved programmes.

MR. ESTEY : There are two answers to that Mr. Coyne - one is the general proposal of this association that that type of control should not change - somebody should have it. Secondly, if you want to stay within this Act, then I say you can control it and do so either by better draftsmanship of the Act or in the licensing section which says it gives the license under certain conditions and you can put that in as a condition.

MR. COYNE : So that in effect you are not advocating the abandonment of that type of regulation?

MR. ESTEY : No sir.

THE CHAIRMAN : Just before you leave that point you have here, on page 20, a provision that section: 21 (1) F will be repealed and that allows the CBC to promote and ensure the greater use of Canadian talent by the corporation and private stations. You are taking that out and down at the footnote on page 20 you say that after repeal of section 21 of the Broadcasting Act it will be necessary to re-enact 1-F, leaving the others out and to delete therefrom reference to private stations. So that that would mean that the corporation is required to promote and ensure the greater use of Canadian talent by the corporation and, having taken these two steps legislatively, we

would be left with the situation where no one has the power to control or to promote and ensure the greater use of Canadian talent by private stations.

MR. ESTEY : Mr. Chairman, I think you are applying to our representation something which I think we are guilty of towards the CBC and that is that we suspect a great deal in what is actually a very innocent statement.

All that we have tried to do is set up a statute out of the Broadcasting Act and we took the Trans-Canada Air Lines Act and we brought the Broadcasting Act back to where it is and then we put into the new Act everything which we thought was in the old.

THE CHAIRMAN : You freely leave out any power of control on the use of Canadian talent by the private stations.

MR. ESTEY : No, because we say you can put in a condition in the license and you can cancel the license if that condition is not met.

THE CHAIRMAN: Well - I am not sure that you do because this is on that point --

MR. COYNE : I think you are dealing with Section 26 on page 14.

THE CHAIRMAN : Yes -- page 14---where you speak about the term of the license as being 5 years and so on -- now you say "it must be renewed". In other words, this is a perpetual license you are asking for - during good behaviour.

MR. ESTEY : Yes, that is right, but also

subject to the conditions of the licence itself.

THE CHAIRMAN: Yes - but supposing they didn't have them handy at the time but wanted to put some new conditions in next time ?

MR. ESTEY : Well we are not trying to get away from any regulations - and I want to stress this again -- we do not try in here, to get away from anything - or any regulation of the CBC on competition. This Act is not designed for that purpose or for any other ulterior purpose. Maybe we might have said an annual license or perhaps we might have put that back in there --

THE CHAIRMAN : Well just a minute, you are saying that you don't want to get away from restrictions that now exist -- so I am pointing out to you that the Act you have drafted, very carefully gets you away from a restriction that now exists!

MR. ESTEY ; We didn't think that we had done that, because the board has the power to put in any condition it wants on this license which is a vital place to put it.

THE CHAIRMAN : Well do you think Mr. Estey -- the question of regulating or ensuring the greater use of Canadian talent is one that could be put in a license ?

MR. ESTEY : Well we think it could but we would certainly have no objection to putting it back into the Act if it is a matter of draftsmanship.

THE CHAIRMAN : Well how do you make this go along with Exhibit 310 which we have not read

yet?

At page 4 at the bottom --

MR. ESTEY : is that the supplement number on it ?

MR. COYNE : Fourteen.

THE CHAIRMAN : Yes - fourteen.

You say at the bottom that the government should not have the power to control the content of the material that is broadcast -- that is not saying that the CBC should not have power - that is saying that nobody should have the power.

MR. ESTEY : Well that is a matter I think of words, again.

THE CHAIRMAN : It is a matter of what you mean.

MR. ESTEY : Well I can tell you clearly what we mean sir. What we mean is and what we say is that in today's age of political democracy it is essential that nobody have the control - the political control over what is said, that you should not limit expression - and that is all that is meant.

THE CHAIRMAN : But you have got certain control. Let us take for example the thing that you were discussing - the promotion of Canadian talent -- assume that it is a desirable thing in this country. Then you have to do with the content of the material that is broadcast and here in these specific words - the most specific words I should think you could get - in one of your official filed documents, you say that governments should not have the power to control

the content of the material that is broadcast.

MR. ESTEY : Might I read the first part of that paragraph from which you quote -- "Unlike the printed and distributed press radio and television of necessity must have its technical equipment licensed and its technical operation policed by government, and that is all the more reason why government should not have power to control the content of material that is broadcast". Now the context is that government doesn't control what is printed - the editorial columns of the newspaper - we say that radio should not be controlled in that way and that is all we say.

THE CHAIRMAN : So what you are saying is that unlike the printed and distributed press radio and television of necessity must have its technical equipment licensed and its technical operation policed by government -- which is purely on the matter of such technical things as channels and frequencies and licenses and so on -- and this is all the more reason why government should not have power to control the content of the material that is broadcast -- now let me put this to you --- in the matter of Canadian news content which you say now you are quite willing to tack on to your license, that would be tacked on by government - by a government agency --

MR. ESTEY : That is right.

THE CHAIRMAN : In your brief you said governments should not have the power to control the content of material that is broadcast, though.

MR. ESTEY : Content of material does not mean the artist. In our expression material means what the artist says and parliament can tell us how many Canadians we have to have on the broadcast, certainly, but what we don't want is - and the press doesn't want - is to have parliament or anybody having the right to say what we will have in our news reports is such and such -- or that we will not have such and such. In the press for example they have a regulation that they have to get a license from a boiler inspector if they are a steam operation but the government doesn't go in and say you have to do this and that -- the Fair Employment Act and the Factory Act apply to the press but we don't find any regulations on the number of inches on the editorial page or whether you will have any editorial space.

THE CHAIRMAN : But that is precisely what I am getting at - that the position now is that there should be no controls of its programme content -- or whether it is analagous to the newspaper situation or whether you expect that certain controls of programme content are possible.

MR. ESTEY : Well obviously there has to be some control -- in the extreme case you have to control programme content for some things - you could not have obscene material or seditious material on the air - or in the press. Certain things are common to the press and to the radio. Now it may be that there are things

which are more extreme on radio and which may have to be controlled.

THE CHAIRMAN : Well whichever you like - let us take programmes on radio which are nothing but imported discs all the time - however you want to argue about it, there are not so many practically possible radio stations in Canada - maybe a few more than we have now but there are quite a number already. Regarding one of these relatively rare public assets, national assets, is being used for nothing but turning out old records, or let us take television channels used for nothing but carrying old American films -- which could happen - are there to be powers to control that or not

MR. ESTEY : Yes.

THE CHAIRMAN: This not what you are saying here.

MR. ESTEY: We could battle this until there are five moons in the sky. Section 26 says that "licenses issued under this act to broadcasting stations..." -- and that does not mean CBC-- "...shall contain in addition to any other provisions as the Board may prescribe a statement with the following conditions to which the license shall be subject." We say the public need at that time as interpreted by the Board is that, "We will not play old Italian films," and put it in the license.

THE CHAIRMAN: Then I will come back to my other question: do you think that that kind of really operating provision which is, as you have said yourself, dealing with a very changing and developing science, is capable of being put into the license?

MR. ESTEY: Perhaps we should move it out of section 26, and put it into the section involved.

THE CHAIRMAN: Is it a condition of license -- you mean put it in the general regulations?

MR. ESTEY: Yes. It could go in section 21. We happen to have it in section 26.

THE CHAIRMAN: I must say that by what seemed like very careful elimination, on the last page of your draft, I thought you were proposing that any measure to promote and ensure the use of

Canadian talent would be applicable to the Corporation but should not under any circumstances be applicable to the private stations?

MR. ESTEY: I can personally assure you, as I drew the footnote on the last page, that was done by thumbing through the Act and picking out those things not found in the Australian statute.

MR. HENDERSON: The reason for having submitted this -- and we have no nefarious purpose in doing it -- was that we did it to be helpful.

THE CHAIRMAN: No one is suggesting any nefarious purpose.

MR. HENDERSON: In other words, we quite realize that on a detailed examination as it would be billed it would be given a very thorough, searching consideration as to detail, which would result in many changes. So that, when we depart from some of the positions that may be written in the bill as it now is formed, that is quite in keeping with the intent when we submit it.

THE CHAIRMAN: Yes, but what we are trying to do is to find out what it is that the private broadcasting organization really wants. One way of getting that is, when they go to the trouble of drafting out an Act in legal words, presumably it is fair to assume that this is what they do want.

MR. HENDERSON: Yes.

THE CHAIRMAN: Now, it seems to me you are suggesting quite material departures from the present system. Going back to Mr. Coyne's original question this afternoon, where you were referring to another supplement -- supplement 17 -- "There isn't one national system, but two" -- I think it is debatable as to whether or not there are two national systems today, but the fact is you would like to have two national systems today -- in the future?

MR. ESTEY: Integrated, yes.

MR. HENDERSON: Integrated by the Board.

THE CHAIRMAN: And to that extent that is your proposal?

MR. HENDERSON: Yes, that is correct. We would be quite happy to have the heart of this statute accepted, and if the arms and legs are changed, that is quite acceptable, but the basis is the separate board integrating the two systems.

THE CHAIRMAN: The two systems?

MR. HENDERSON: Well to avoid that word, two services each providing service to the community.

THE CHAIRMAN: You can't avoid the word that is in your brief; you use it.

MR. ESTEY: What we want is the right to form networks. Let us not hedge about that.

THE CHAIRMAN: We will come to that later, because I think there is a lot to be asked about networks, and what your plans are, and what

you would like to do, but that is one of the main things you would like -- to form networks?

MR. ESTEY: Yes.

MR. HENDERSON: Yes, we ask for it.

MR. COYNE: You are not suggesting you have the right to form networks as a right; you suggest you have the right to persuade the Canadian Telecommunications Board that you should have a network?

MR. ESTEY: To avoid the use of the word "right", we would like permission to form networks.

MR. COYNE: From a board?

MR. ESTEY: Yes.

THE CHAIRMAN: You think it would be better coming from the Telecommunications Board rather than the CBC?

MR. ESTEY: Yes.

MR. deGRANDPRE: Isn't that a departure from the original statement made at the end of April or the beginning of May? I was under the impression that the original statement was to the effect that there was no desire to form networks?

MR. ESTEY: No desire to form networks?

MR. deGRANDPRE: Yes, on a national basis.

MR. ESTEY: This is also a question of terminology, and we want an atmosphere created which will allow private enterprise to grow to the stature which will enable it to apply for and,

if allowed to do so, to operate a national network.

THE CHAIRMAN: I have only one other question to ask: on page 15, section 27, Mr. Estey, you are providing there, "No license for the establishment and operation of broadcasting stations shall be issued to or be held by: (a)"-- and this is quite a complicated section --"any company of which a majority of the directors is not comprised of Canadian citizens or of which more than one-quarter of the voting or equity stock is owned or controlled by persons who are not citizens of Canada, or to any company which is directly or indirectly controlled by any other company of which a majority of the directors is not comprised of Canadian citizens or of which more than one-quarter of the voting or equity stock is owned or controlled by persons who are not citizens of Canada, if the Board finds that the public interest will not be thereby served." I just want to be sure I understand: you are trying there, I take it, to ensure that not more than 25 per cent of the effective control of private broadcasting stations will be owned outside the country?

MR. ESTEY: Yes.

THE CHAIRMAN: That would mean that even if the X.Y. company in the United States formed a wholly-owned subsidiary in Canada, the X.Y. Canadian corporation, that unless the X.Y.

U.S. company had 75 per cent ownership by Canada, they could not get a license?

MR. ESTEY: That is right, sir. We were surprised to find that the Radio Act created a condition whereby anybody could come into Canada and get a license. If you look at the Federal Communications Act, they won't let you do that.

THE CHAIRMAN: Is this more or less in the Federal Communications form?

MR. ESTEY: No, this is more like the Loan Corporations Act where Canada has said you shall not establish a corporation unless this is true, and we have taken that Act and adopted it to the conditions in radio and used some of the wording out of the regulations in the Radio Act in connection with the permission you have to get to transfer shares. We were quite proud of the fact that when ^{we} we drafted this we were two years ahead of the CBC.

THE CHAIRMAN: But as this stands, you will probably lose a couple of your members?

MR. ESTEY: Well, that shows our objectivity even more.

THE CHAIRMAN: Mr. Estey, is it fair to say -- and I am not suggesting it, but just putting it in this form as a question -- that this statute as drafted is fairly closely analagous to the FCC setup in the United States?

MR. ESTEY: Yes, it is similar in principle, but it is no parallel.

THE CHAIRMAN: I don't mean the 25 per cent. I mean the whole statute.

MR. ESTEY: Yes, the FCA is a very much different statute and with a vastly different history and constitutional background, but the result is an independent body. Beyond that it is.

THE CHAIRMAN: Yes, but wouldn't the result in Canada of your statute, amended and changed as it might be, be less control than there is now?

MR. ESTEY: I would say that our intention and our interpretation of the draft Act is that the control would be the same as today on the broadcasting, but the method of control would be different.

THE CHAIRMAN: I see. You are not going as far as the FCC does in not doing certain types of control?

MR. ESTEY: No, not at all. There is really only one sentence in the whole Act that is useful to Canada. It is an entirely different concept.

THE CHAIRMAN: Mr. Coyne, you will have a number of questions, I have no doubt, on other parts of this matter we had this morning, but I think this is a convenient time to break.

MR. ESTEY: Perhaps before we do, I would like to set the record straight: Mr. deGrandpre has asked whether the network is inconsistent, and

I would refer to page 29 of supplement 12, filed at the original hearing, where we asked that citizen broadcasters be permitted to form networks. It is near the bottom of the page.

THE CHAIRMAN: Perhaps Mr. deGrandpre can look that up?

MR. deGRANDPRE: I am thinking of the verbal reply, and I will check the transcript of the evidence.

THE CHAIRMAN: All right, we will adjourn now until 10.30 tomorrow morning.

---The hearing adjourned at 4.45 p.m. until 10.30 a.m.

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ROYAL COMMISSION

ON

BROADCASTING

HEARINGS

HELD AT

OTTAWA, ONT.

OCTOBER 4, 1956

v 43

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ROYAL COMMISSION ON BROADCASTING

Ottawa, Ontario,
Thursday,
October 4, 1956.

PRESENT:

MR. ROBERT M. FOWLER	Chairman
MR. EDMUND TURCOTTE	Commissioner
MR. JAMES STEWART	Commissioner

MR. JOHN M. COYNE	}	Counsel
MR. A. J. de GRANDPRE		

MR. PAUL PELLETIER	Secretary
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FINAL SUBMISSIONS:

Canadian Association of Radio
and Television Broadcasters
(Continued)

THE CHAIRMAN: Mr. Coyne, when we adjourned last night I think you had virtually completed your questioning on the draft bill.

MR. COYNE: That is true Mr. Chairman.

ETH CHAIRMAN: But there were some other points perhaps that you still have on the other statements and points raised in this section which we can cover through Mr. Estey and the other gentlemen today.

MR. COYNE: Right.

THE CHAIRMAN: Would you proceed from there then, please.

MR. HENDERSON: If I may interrupt Mr. Coyne at this point, Mr. Chairman, may I make this suggestion for consideration. Part 1 that we have read into the record deals with two aspects of the matter. It deals with the dual role of the CBC from the standpoint of the CBC within this country, and it also deals with the dual role and its effect in respect of our international relations in this field abroad. We had hoped that perhaps we could adduce some evidence in relation to the second phase of the matter, at some stage, and Mr. Chandler, who is here today, and who will give that evidence, is available now. The evidence will be addressed to certain parts of Part 1 and also one part of Part 2, particularly paragraphs 7 and 8 on Page 13 and paragraphs 6 and 7 on Page 17. Then we go into the second part, the television aspect of the matter, which is paragraph 8 on Page 23.

I merely wish to draw your attention Mr. Chairman and gentlemen, to the fact that Mr. Chandler is here and available to give that evidence, and perhaps the evidence might well go in before Mr. Coyne questions us, because it may affect some of the questions he has.

THE CHAIRMAN: Very well, we are in your hands, and I am glad to have you do this. I think it is only fair to warn Mr. Chandler that we are not technical people in radio and television, and that he had better be very simple.

MR. HENDERSON: We have tried to be simple, not on that basis, but because of the rest of us, we have tried to have Mr. Chandler do it on the basis that would be clearly understood by all.

THE CHAIRMAN: There is one further point Mr. Henderson which I think you should have in mind that obviously we are not in this Commission going to form a detailed judgment on particular technical matters. In this broadcasting field a properly constituted board or authority would be the one to deal with technical matters, and no commission constituted such as this one, could possibly form a complete judgment on highly technical matters.

MWR. HENDERSON: We realize that, sir, and we are leaving this thing with you

with a view to showing what can happen from an international standpoint by reason of the dual function and again, we can only do that in terms of results, and Mr. Chandler, when he deals with this matter, will show what in his view has been the result of some of these things.

THE CHAIRMAN: Well, as long as you understand the fairly definite limit within which we are able to consider this presentation and the reasonable relationship to time -- --

MR. HENDERSON: Oh yes, sir, and if at any time it does appear to be going beyond those limits that you have in mind I am sure Mr. Chandler won't mind an interruption.

MR. COYNE: That would certainly fit in with my convenience, to proceed in that way now.

THE CHAIRMAN: Have you anything to say, Mr. Estey?

MR. ESTEY: Yes sir, and perhaps to assure the simplicity of presentation I have been assigned the duty of putting the technical evidence in.

May I preface a somewhat involved technical approach by this statement, sir. While we appreciate that no Royal Commission can completely investigate the technical side of the involved development of technical rules such as we have in broadcasting, at the same time it is our sincere belief that broadcasting

must be viewed not only as an art, but as a science.

THE CHAIRMAN: Some people may question whether it is an art or not, but I think we will certainly admit to the science.

MR. ESTEY: Yes, I am using it in the broad sense that universities use the word "art". If we only study the popular concept of broadcasting, that is the noise side of it to put it very baldly, then we have only covered part of the subject. The broadcasting industry is not limited to the art or the philosophical side, but it has its roots and its future only in the technical side.

Mr. Chandler is as the Commission knows, the President of CJOR Broadcasting Station in the City of Vancouver, and he has made in his thirty years in the broadcasting field a continuous and full study of the principles behind the allocation of frequencies, and he has also made a study of the principles involved in the utilization and the acquisition of frequencies. Now, we have tried to limit this -- we think we can put it within close limits in time of this examination, and in order to achieve that objective I am going to break up this technical evidence into three parts. I direct the Commission's attention first of all to Page 13, Paragraph 7, where we deal with the so-called power freeze of 1000 watts and state that this recommendation was made in spite of the fact that the channels on which most

of these stations were operating could and should be used at 5000 watts of power by international agreement.

This move certainly did not serve the public. The situation was protested vigorously by private stations and others until it was rectified in 1946, but in the meantime irreparable harm had been done to the potential of Canadian coverage on Canadian stations. Now, Mr. Chandler, would you tell us in as close as you can get to layman's language the effect of the U.S. stations increasing from one kilowatt to five kilowatts and why is this done?

MR. CHANDLER: In the mid-thirties the U.S. considered changing the standards of their so-called regional stations and those stations at that time had a maximum power of 1000 watts. The proposal was to horizontally lift the power of all their regional stations from 1000 to 5000 watts.

THE CHAIRMAN: Excuse me, I didn't get one word there, what stations?

MR. CHANDLER: Regional was the classification.

THE CHAIRMAN: What is a regional station?

MR. CHANDLER: They had three classifications of stations in the North American agreement -- clear channel stations, regional stations and local stations.

THE CHAIRMAN: And this is the intermediate group.

MR. CHANDLER: This is the intermediate group, and provided that all these stations raise their power simultaneously the status quo will be maintained at night-time, but, if a station fails to raise its power then its night-time transmission would be greatly reduced.

Two new standards were set up for interference levels to fit the situation. Previous to the raise in power from 1000 watts the attempt was to keep interference levels of these regional stations at night-time to a maximum of one millivolt contour, and it is rather important that I bring these figures in. The new standards accounted for a restriction to the two and a half millivolt contour line.

MR. ESTEY: Could I interrupt you for a moment. Perhaps you could tell us very briefly what you mean by a one millivolt contour.

MR. CHANDLER: A one millivolt contour is a line that is drawn through all areas with a measurement of the signal of the station as one thousandth of a volt.

THE CHAIRMAN: It is a sort of circle around the station --

MR. CHANDLER: That's right.

THE CHAIRMAN: It may not be a perfect circle, but it is the area that can be reached.

MR. CHANDLER: The area covered.

THE CHAIRMAN: With what kind of reception -- reliable reception?

MR. CHANDLER: That is the reliable reception area. Now the new standards came to

the two and a half millivolt contour. Then there is a junior classification of regional stations created and what they call in the later treaty Class 3B and these junior stations had interference from the four millivolt contour level. This is much closer to the maximum and therefore they had less coverage. Now Class 3B stations were restricted in power to a minimum of 500 watts and a maximum of 1000 at night-time, but to give comparisons of the area they covered by these several contours we have Mr. Lee, who is an engineer, and who has taken a sample station, which is an imaginary station operating in 1000 kilocycles by 1000 watts in the first example, to explain this to you. It will give a little better service and with a station located say in Ottawa there will not be as good service as say, that sample station in the prairies, but as the sample station is really hypothetical I will ask Mr. Lee to explain to you the number of square miles that would be covered by these three contours.

THE CHAIRMAN: You will have to speak fairly loudly as I don't think the microphones will go that far. Perhaps you would raise your voice -- I think it would be a good arrangement, Mr. Estey, if you went down there and then you would have to speak loudly.

MR. LEE: The area covered by a one kilowatt station, the number of kilocycles are: 4770 square miles to the one millivolt

per meter contour. To the 2.5 millivolt per meter contour, using the same station and the same radiation contour, it is 1960 square miles. These are to slide rule accuracy.

THE CHAIRMAN: But why does the 2.5 -- I am going to show my ignorance here -- the 2.5 contour gives you 1,960 and the 1 millivolt gives you 4,770?

MR. LEE: When it comes out on the antenna it starts out at 200, goes to 100, to 50, to 2.5 to 1 millivolt; so the 2.5 is much smaller than the one.

THE CHAIRMAN: I have it the other way around.

MR. LEE: The 2.5 millivolt contour is 1,960 square miles and the 1 millivolt contour it is 1,168 square miles. Now, do you want me to carry on with this?

MR. CHANDLER: I think so.

MR. LEE: If a station is normally protected to the 1 millivolt contour, when I say protected I mean there is no interference signal, if the station is normally protected to the 1 millivolt contour and it is reduced to the 2.5 millivolt contour this station loses 2,810 square miles on its coverage or 58.8 per cent reducing it from the one to the 2.5. Then, carrying on that further, if this station normally protected to the 1 millivolt contour is reduced to the 4 millivolt contour, that is closer still to the antenna, the station loses 3,612 square miles coverage or 75.7 per cent of its coverage. That is the data on the 1 millivolt station.

MR. CHANDLER: So the point is that

unless these stations raise power simultaneously the 1,000-watt station would lose substantially from the horizontal increases in power in the United States. The CBC in December, 1936 came forth with a proposal that all stations in Canada 1,000 watts or lower would have their power frozen to a maximum of 1,000 watts. In the latter thirties the United States started a very heavy construction programme of regional stations raising them to 5,000 watts and the result was, by Mr. Lee's evidence here, that in the territory our Canadian stations lost at night-time 58.8 per cent of coverage and we had no recourse. Now, it is quite evidence that engineers advising the Corporation must have been as aware of this situation in the United States as were we private broadcasters; in fact, I would think their liaison would be better. This thing became rather permanent because by U.S. standards this junior class of Class 3 regional station, Class 3-B had power of 500 or 1,000 watts so United States engineers making construction projects in considering Canadian stations almost invariably took the view that Canadian stations were Class 3-B stations. As evidence of that I have seen the engineer's brief for an application in Portland, Oregon to get a station and where in it says it was not necessary for them to consider the Regina station as it was obviously 3-B.

MR. ESTEY: What was the power of that Regina station?

MR. CHANDLER: It was 1,000 watts.

MR. ESTEY: Let us follow that through, what was the effect on the Regina coverage by the Port and increase in power?

MR. CHANDLER: We take a theoretical station, not precisely the Regina station and the reduction in coverage would be approximately 75 per cent at night-time.

THE CHAIRMAN: Then what happens when the Regina station does in fact go up to 5,000 watts?

MR. CHANDLER: I have a rather interesting proposition on what happens there, there is a permanent loss of about 30 per cent.

MR. LEE: 42.7 per cent.

MR. CHANDLER: That is permanent loss, you would never be able to restore it back to 42.7 of what it was before.

THE CHAIRMAN: Suppose they both went up 5,000 watts at the same time?

MR. CHANDLER: The status quo would have remained because the United States station, I do not think this could have got past the FCC without giving protection to the 2.5 millivolt Canadian station. The Canadian station was certainly entitled to some reciprocity if it did not have maximum power. It is another threat.

MR. ESTEY: . We have an example of what

the Chairman was saying, I believe you have this in your own station somewhat along the lines that Mr. Fowler has mentioned. What has happened at CJOC?

MR. CHANDLER: Well, that is quite interesting; CJOC at the moment enjoys the benefit we would have if the power was the same as the United States. During the period of time we did not raise our power we lost a night-time audience, however, our power in 1936 was 500 watts, we had been attempting to get it raised to the maximum unsuccessfully but by the new North American Broadcasting agreement signed in Havana our station obviously was of a junior class, a Class 3-B station ⁱⁿ although we ~~fact~~ were ~~receiving better interference~~ protection than most of these regional stations were. So, we had this constant threat and we had no protection, the only protection we could have had was a minimum raise to 1,000 watts at least. Then, at one time when we saw someone encroaching on us from the United States, the only way I achieved results was by bluffing.

THE CHAIRMAN: By what?

MR. CHANDLER: Bluffing. For instance, I heard of a proposal of a station in Idaho going to file on our frequency and I did not get much sympathy from Ottawa; Ottawa might have been sympathetic to me but nothing was done. I wrote this station and I said that we had filed an application for 5,000 watts and we expected it to

be in very shortly and it would make a difference in the position of this station. That flattened the station, not a very nice way to do business but it was the only means of protection I had. That was in late 1939. Then, some three years later the CBC finally authorized us to use the 1,000 watts so then we could rightfully claim we were a Class 3 station and if we did see some United States engineers who proposed stations that would put us in the junior classification of the 3-B we at least had some grounds for argument but for three years there we were completely without any protection.

MR. ESTEY: When you went to 5,000 watts, when was that?

MR. CHANDLER: That was 1926.

MR. ESTEY: And at that time did you then suffer the effects which you have described in the case of CKCK Regina?

MR. CHANDLER: We did not because our position had been protected considerably. I think ours is an exception in Canada.

THE CHAIRMAN: Well, in actual fact, as applied to you, this did not hurt you?

MR. CHANDLER: That is correct, it did not hurt us except we lost coverage for a few years at night-time.

MR. ESTEY: Who did it hurt?

MR. CHANDLER: Well, I would say that it hurt every station on a regional frequency in

Canada until such time as they get power up to 5 kilowatts and some of them, because of the United States, they limit them to 4 millivolt contour instead of them raising the power they have a loss in night-time coverage.

MR. ESTEY: And you have mentioned that permanent loss on an average, I believe Mr. Lee said 40 per cent.

MR. LEE: 42.7 per cent.

THE CHAIRMAN: Well give us the station that was hurt.

MR. CHANDLER: I am suggesting CKCK Regina, CFQC Saskatoon. Now, I am in no position and have not had the opportunity of making a station to station analysis but I am confident that this thing is duplicated across Canada.

THE CHAIRMAN: But you have no evidence as to what the particular situation was in Calgary or Saskatoon as to what has happened?

MR. CHANDLER: How do you mean what happened?

THE CHAIRMAN: How much territory you lost by staying at 1,000 watts and ultimately going to 5,000?

MR. CHANDLER: Well, in this case, Mr. Lee again took the sample station, not the specific station, there is permanent loss --

THE CHAIRMAN: Well, you have come up with an imaginary station as to what would happen; in the

one case of which you were speaking directly you did not get hurt at all. Now, it makes it a lot easier if we know of a specific person who has been hurt and not some theoretical thing.

MR. CHANDLER: I have explained this case of CKCK in Regina and CFQC in Saskatoon. Here is what happened; their nearest United States occupant in that channel was a 1,000-watt station in Waterloo, Iowa. They filed an application to move to Cedar Rapids and raise the power to 5,000 watts and I saw the engineering proposal for this Cedar Rapids station and the Cedar Rapids station proposed that their antenna would restrict the Saskatoon station. CFQC up to that time had been protected with the 2.5 millivolt contour so when they raised the power they would not have restored to what it was previously. There is a case of a permanent loss that probably compares with the sample station Mr. Lee mentioned.

THE CHAIRMAN: What is the station in Saskatoon?

MR. CHANDLER: CFQC.

THE CHAIRMAN: The operator of CFQC is here and I would like to ask you if you were hurt.

MR. DALLIN: I cannot speak off hand because I was not the engineer in the active operation there at the time but I think Mr. Chandler knows that other stations come in there between Iowa and Saskatoon now, North Dakota and when we get down into the area in that direction there is

interference from those stations.

THE CHAIRMAN: But you as an operator of a station must know the area you have been covering and must know whether you have been hurt or not.

MR. DALLIN: Well, here is another thing, when you talk about coverage of the stations on the prairies you are talking about something different from the coverage in Ontario. Yes, we suffered a loss because we were locked in, we suffered audience loss.

THE CHAIRMAN: How much audience loss?

MR. DALLIN: Well, there is no way to measure it, we did not measure it. We know there was interference in that direction.

THE CHAIRMAN: Thank you.

COMMISSIONER STEWART: Well, is it possible to regain all this the minute your power is increased?

MR. CHANDLER: Well, some of it is regained.

COMMISSIONER STEWART: How is the loss a permanent loss if you are allowed ultimately to go up to the higher power?

MR. CHANDLER: It is because the interference had been allowed to raise higher than it should have, the interference had been allowed to raise to restrict the 4 kilowatt contour line which is much closer to the station than the 100 kilowatt contour line which is further from the station so by raising the power you are not able to reduce the interference, all you get is some compensation for the

interference.

COMMISSIONER STEWART: To put it another way, the American station raised the power beyond the point that they would have been allowed to do it?

MR. CHANDLER: That is one very good point that happened in many cases.

MR. DALLIN: I agree with Mr. Chandler, we were hurt in this way, when the station came in first they came into the territory we could not fight and when we could get into it we have no way of getting the audience back. We are hurt that way.

COMMISSIONER STEWART: But let us get back to the original point, the station in the United States that is giving the interference, had we carried through on the original plan that United States station would never have been allowed to power itself today.

MR. CHANDLER: It would have been allowed the power to act but there is so much power into Canada.

MR. ESTEY: That is the point.

MR. CHANDLER: In other words, it would have shielded the Canadian station.

MR. COYNE: If we might just pursue that for a moment, in the general discussion under the international agreement is provision made for protecting Canadian frequencies and the transmissions, and the putting out of Canadian signals?

MR. CHANDLER: Yes, there is provision in the treaty and there is provision in this original Havana treaty to raise the power ---

MR. COYNE: Prior to the agreement?

MR. CHANDLER: Here is the problem. The U.S. engineers have classified our stations as sub-stations, 3-A and 3-B class, and the 3-A station is allowed a maximum night-time power of 5000 watts and a minimum of 1000 watts, and the 3-B is allowed a minimum of 500 and a maximum of 1000. The 3-A class is restricted to a formidable contour line and the 3-B to a formidable contour line which is much closer and much nearer to the station. It was this area that the U.S. engineers in these proposals wanted to give us and they got it by federal angles, because this Canadian station is 1000 watts, it is 3-B, and therefore we can interfere with them, with the formidable contour line, and we have so designed our antenna.

MR. COYNE: Wouldn't that be contrary to the international agreement? You were entitled under the international agreement to raise your power to 5000. They wouldn't let you, but you were entitled to do that if your application was approved?

MR. CHANDLER: That is right.

MR. COYNE: Suppose you had raised your power first to 5000 watts, now having done so the American station in a certain position was entitled to raise their power to 5000 watts also. Now, what is the difference?

MR. CHANDLER: The difference would have been this, that we raised the power simultaneously, and whenever we saw the Americans raising the power and giving us excessive interference we complained to the Government and I am inclined to think we would have had some action, because there is always the possibility of retaliation. For example, if the American station interfered excessively with you and you interfered excessively with him he would listen to reason, and that is why these international agreements are drawn up.

MR. COYNE: Isn't he bound to give protection if you are entitled to run a 5000 watt station on that frequency under the agreement, and they are also? Isn't Canada entitled to a certain protection for the signals of that station?

MR. CHANDLER: That is correct. But the proposition that these U.S. engineers operated on, because the Canadian stations were 1000 watts they were a junior class, and they could interfere with them to a greater extent.

MR. COYNE: I agree with you, but supposing the U.S. engineers are under a misapprehension as to the meaning of the treaty and say, if you had been there first, the U.S. in planning their station would have a special engineering worked

out to protect you to the 2.5 milovolt line if you are entitled to operate on that frequency of 5000 watts, and under the international agreement entitled to protection to 5000 watts. Why would you force the American station, after it had been in operation pursuant to the terms of the international agreement, why couldn't Canada introduce into its structure the necessary protection to protect your signals which you are entitled to put out under the international agreement?

MR. ESTEY: As I understand that, perhaps I can answer that without being involved in the details. Two practical things happened. The classification of the Canadian original stations as class 3-B, and under the treaty class 3-B is entitled to lower standards of protection, and those were standards created by the Canadian station.

MR. COYNE: Under the treaty Canada agreed these stations were classed 3-B?

MR. ESTEY: No, they didn't agree, but the U. S. interpreted that the power is of a 3-B level.

MR. COYNE: This is contrary to the provisions in the international agreement.

MR. ESTEY: It wasn't contrary. These agreements are not as inter-party contracts binding in detail; they state details, and the detail is a class 3 original station can be either 3-A or 3-B. Canada's domestic order freezing at one kilowatt described all those original stations in the eyes of the treaty as 3-B. The U.S. acting on that self-limitation of Canada said, "We will give them

protection on that 3-B basis."

MR. COYNE: Could Canada, if the treaty was properly enforced, force the U. S. to give them 3-A protection?

MR. ESTEY: That is a question that private people couldn't answer. The Government might be able to do that, but they never have.

MR. CHANDLER: If we claim classification with/ in many cases as 3-A/the situation as it is now, I must take this interpretation and I don't know how the interpretation of these things got through, but I don't think you can restore the damage now.

MR. COYNE: Just to summarize that position, it would require Government action?

MR. CHANDLER: It would require Government action to restore them.

MR. COYNE: To force the FCC to admit you were entitled to 3-A protection?

MR. CHANDLER: That is right, and I don't think there is a ghost of a chance of it happening.

MR. COYNE: That is what you mean when you say that there is irrevocable damage?

MR. CHANDLER: Yes.

MR. ESTEY: Mr. Chairman, let us deal very briefly with that part of paragraph 8 where we say:

"During the 1937 NARBA conference, the channels then being used by radio broadcasting stations CFRB Toronto, CKLW Windsor, and CKAC Montreal should have been listed for Canadian use at 50,000 watts of power

under international standards then prevailing. This use was acceptable to representatives of the Department of Transport. However, at the insistence of the CBC, the channels then being used by these stations were limited to 5000 watts of power even in the international agreement with resulting curtailment of Canada's resources in these particular instances."

Now, Mr. Chandler, will you explain that for us?

MR. CHANDLER: What happened was this: the first treaty dealt with Canada or Mexico and they were asking for more clear channels. There were stations in Canada, namely CFRB Toronto, 10,000 watts, CKLW Windsor, 5,000, CKAC in Montreal, 50,000, and CFAC Calgary, 10,000, CKLY Winnipeg, 15,000 -- keeping those clear channels, and apparently the Canadian Government wanted to blow them up. There had to be a number of revisions, so they agreed to a new class of station to take care of these revisions. They were the secondary stations and placed in their channels in order to give the dominant clear channel position maximum interference protection. We, in turn, were subject to any interference received from a dominant station. The classification of power of these channels was 250 watts minimum and 50,000 watts maximum. Canada had a number of class 2 channels assigned to take care of these Canadian revisions that are being built for Canadian clear channels. Canada

was asked at this conference what it was they claimed was maximum and they claimed for the channels, and my information is the Department of Transport representative said the maximum -- he being of the opinion while it was domestic policy at that time in Canada to freeze power of stations, the Department should not bind the acts of future governments which might change the general policy. I am informed the CBC representative at the conference objected and that the conference was adjourned for a while while Canadians made up their minds, and as evidenced by Mr. Bain's letter, the Department of Transport finally backed down and the views of the CBC as to the freezing power of these stations prevailed. Now, since that time they have had one case -- in the case of the 8 kilocycle channel, they have a lot of them coming up to maximum power, but in the meantime other stations have come in on this 8 kilocycle frequencies and it has resulted in an extremely complicated antenna problem.

MR. ESTEY: Is the same thing true on the 1010 kilocycle in connection with CFRB Toronto and WOR New York?

MR. CHANDLER: CFRB was moved to the 1010 kilocycle and WOR New York had a very severe antenna problem, and in order to protect CJAC Alberta, it had to protect the 50,000 watt station in New York within a 300-mile area, which made an almost impossible engineering proposition, and as a result there has been a complete loss of coverage in southern Ontario for CFRB.

THE CHAIRMAN: Do you say a complete loss of coverage in southern Ontario?

MR. CHANDLER: Yes.

THE CHAIRMAN: What do you mean by southern Ontario?

MR. CHANDLER: South of Toronto in the direction of New York.

MR. ESTEY: Throughout all this is the 650-mile area rule which has a bearing. Mr. Chandler can tell us what it is.

MR. CHANDLER: Where you are classed as a 1-A station with a clear channel with other nations, you are prohibited from working a night-time station within 650 miles of the border of that country. It is called the 650-mile rule. My understanding is that this rule was injected at the request of the Canadian delegation and why, is beyond me, but I am told it was injected at their request, and it was readily bought by the U. S. because it didn't hamper the U. S. too much as they have a country of great length. There are three exceptions. WTAS New York is well within the 655 miles of the border. It has a station virtually well within the 655 miles of the border, and is on the same channel as Winnipeg with a 1-A station. And Knoxville, Tennessee, this is an exception written into the treaty. It is within the 650 miles of the Canadian border, and it is on a class 1-A channel of Winnipeg. Now, there are twenty-five of these U.S. 1-A channels; 1-A channels are useful for daytime and perhaps night-time stations

in Canada were it not for this 650-mile rule.

MR. COYNE: How many stations are there in the 650-mile area?

MR. CHANDLER: It is fixed at 650 miles ---

MR. COYNE: How many would have been in the 650-mile point if they had not made the treaty?

MR. CHANDLER: There is adequate protection set up in the engineering standards of the treaty. A station would have to give adequate protection to the border no matter where it was located. The 650-mile rule, I think, is an unnecessary one, but the effect of that was really to make it impossible for Canada to make any use of the 25 American class 1-A channels where the United States is making the same use of all Canadian 1-A channels. If they make more than 650 miles away they would not interfere, in an engineering way, except for these three stations.

MR. COYNE: And they are not in danger of interfering with your signals, or any other Canadian signals?

MR. CHANDLER: That is right, but that is three out of seven. But it effectively removed Canada from the 25 channels.

MR. ESTEY: Are the seven class 1-A channels which Canada has -- are they used more than once within Canada or are they intensively used?

MR. CHANDLER: I don't think they are intensively used. You will find in the United States, for example, on class 1-A channels, you will find a great number of daytime stations.

Class 1-B channels, you will find a great number of day and night-time secondary stations. In Canada, in the case of the last treaty, Canada did negotiate a position whereby they could reuse three class 1-A channels within Canada again.

There is reserve in the treaty to put a secondary Class II station in the Province of Alberta with 50 kilowatts on CBC's frequency. That is currently occupied by a CBC small transmitter -- one-quarter kilowatt. They are duplicating 690 kilocycles in Montreal and Vancouver. It probably could be used in the prairies some place, but is not. In the case of Watrous, Saskatchewan, that is not being duplicated again in Canada. In the case of the station in Winnipeg it is not being duplicated again in Canada. 1130 kilocycles has been unoccupied for about three years; it is specified in the treaty for the City of Vancouver.

THE CHAIRMAN: Well, what is it you are seeking?

MR. CHANDLER: As a matter of fact, I am not seeking anything. I am just explaining.

THE CHAIRMAN: Yes, but your evidence must be adduced for some purpose. Is the point that you, as a group of private broadcasters, would like to raise your power in your stations, and haven't had a chance to do it?

MR. ESTEY: I think the point is set out in paragraph 8 on page 13, and paragraph 7 on page 17, and summarized just this way. We feel that the frequency allocation and power ceiling has hurt and blocked the normal development of broadcasting in Canada, and as a result of the blocking we have suffered loss as regards United States competition about which might be said that we cannot hit back.

THE CHAIRMAN: What would you like to do

that you have not done?

MR. ESTEY: We would like to get on the Class 1-A channels that are not being used.

THE CHAIRMAN: To give you an opportunity to get a bigger market?

MR. ESTEY: And 1-B channels, and more power on the Class 3 channels.

THE CHAIRMAN: You are not satisfied with the market you have. You want a better one?

MR. ESTEY: We are not satisfied the Canadian listener gets as big a break as he should.

THE CHAIRMAN: But really you want to broadcast to a larger group of listeners?

MR. ESTEY: Well, that follows.

THE CHAIRMAN: It follows?

MR. ESTEY: Yes.

MR. COYNE: Surely, if you are trying to show that this all resulted from the fact that the CBC did not properly represent Canada's interests at these conferences, you have got to show that if the CBC had not been there the United States negotiators would have been prepared to give to Canada in this horse trading -- and it was presumably horse trading -- something which the CBC voluntarily gave away to the Americans?

MR. ESTEY: First of all, let me direct you back to Mr. Bain's letters; secondly, let us be realistic. How can unrepresented private industry, which normally in tariff matters, etc., is represented by the executive arm of the Government, how can they prove in the legal sense

what you have asked us to prove? We are asking you, first of all, to investigate it, and, secondly, to draw reasonable conclusions from the Bain letters and the practical results in terms of Canadian private broadcasters or the listener.

COMMISSIONER STEWART: Mr. Chairman, *I wonder* I wonder those Bain letters could be read again, because I take it from what Mr. Chandler has said that he has not got direct information on what took place at these negotiations, because he kept saying "I am told" and "I am informed". I think it would be useful if you reread those letters.

MR. ESTEY: Would you like me to read those?

THE CHAIRMAN: Yes, would you, please?

MR. ESTEY: Reading the letter of the 19th September, 1956, from Mr. J. William Bain, Professional Engineer, MBE:

"In reply to your request for information with respect to certain facts in connection with the North American Regional Broadcasting Agreement of Havana, 1937, with particular reference to the power limitation of 5 kilowatts imposed by the agreement on certain Class II, Canadian privately owned stations, namely CKAC Montreal, CFRB Toronto, and CKLW Windsor, I beg to advise that I was at that time a radio engineer in the Department of Transport and I attended the Havana Conference as

a member of the official Canadian delegation appointed by the Government.

"The maximum power permitted to a Class II station by the general provisions of the Agreement is 50 kilowatts and to this figure the Government delegation was satisfied to agree.

"However, the representative of the CBC, who was attending the Conference as an observer, brought so much pressure to bear upon the Chairman of our delegation, and this in my presence, that the latter, and to my personal knowledge, with considerable reluctance and against the advice of other members of the official delegation, agreed to the freezing of the power of the above mentioned stations at their then existing power of 5 milowatts and they were so listed in the Appendix which forms an integral part of the Agreement signed at Havana.

"The matter of the limitation of the Class III stations to 1 kilowatt while the Agreement permitted 5 kw, is somewhat different as this limitation had been approved by the Minister prior to the Havana Conference and was confirmed at Havana at the request of the CBC."

Then, on the 24th of September:

"In reply to yours of the 21st inst. requesting further details with reference to the power limitation to 1000 watts for Class III stations approved by the Minister in 1936, I may say that the CBC made no secret at Havana that this was done on their recommendation.

"The Department's officials, on the basis of public interest, which it is their duty to serve, would not have made such a recommendation, as it served no useful national purpose.

"I may further add that, to my knowledge as head of the Section of the Department of Transport charged with Technical administration of the Radio Act in respect of broadcasting stations, from 1936 to 1949, never did the Department recommend nor did the Minister take, of his own initiative, any restrictive measures to the detriment of private broadcasting stations.

"The CBC however, on several occasions to my personal knowledge has brought pressure to bear on the Department or on the Minister, for the adoption of measures which may have been in its own interest but could hardly be said to have been in the national interest. One more instance of this kind of action that comes to mind is the forcing

upon the Department the limitation of the power of private FM stations to 250 watts."

THE CHAIRMAN: Well, at any rate, in Havana the official Canadian delegation in its discussions reached this conclusion and came to this agreement. That agreement may have been, in your view, an unfortunate one or a bad one. Do you suggest the CBC's interests, whatever they may have been -- and I can only guess what they would have been -- should not be considered in those negotiations?

MR. ESTEY: Well, sir, we, a private broadcasting industry, take a biased view, but let us accept that and go on from there: we have shown, or we hope we have shown, that we are in active day to day competition with the CBC for Canadian audience. Here is the basis for getting Canadian audience. Here is the circulation power, but the CBC's interest is to cut down that circulation power, and this is one way that it has been done.

THE CHAIRMAN: But the interests of the CBC, whatever they may have been, are surely interests that should be considered.

MR. ESTEY: Unquestionably. What we say is that, for example, they have the use of the Class 1-A channels for their transmitters, but even when that is granted, and that is in effect, still those channels are not intensely used in Canada and could be without detriment to the CBC.

THE CHAIRMAN: Supposing your independent regulatory board had been in existence in 1937, what

possible difference could have occurred? You would have had the same negotiators -- you had the Department of Transport there and the CBC, and the CBC may have made its case stick.

MR. ESTEY: In our concept the board would be there just the same as the FCC, and that would be it.

MR. HENDERSON: Surely, isn't that the point: it would be considered, we agree, but we feel that because of the position they held they dominated, and they brought pressures to bear which led to their considerations being accepted, and the overall consideration was not the dominating one.

MR. COYNE: Why do you say the CBC has an interest in reducing the circulation area of private stations? Surely a large amount of the CBC national service is carried to considerable areas of Canada through the private station outlets, and why should the CBC have some interest in cutting down the circulation area of outlets which they, in fact, utilize in large measure for the distribution of their programmes?

MR. ESTEY: I wish I could take the time of this Royal Commission to read in toto the 1946 Parliamentary Broadcasting Committee Minutes, because spread right across it -- and we are not going to read from it -- but spread right across it is the answer to your question.

THE CHAIRMAN: Did that Parliamentary Committee decide the CBC had been wrong?

MR. ESTEY: No, the information which we

have brought to light today did not come to light, but the answer to the question is, what possible interest did CBC have in this type of action, and I say that question is answered in those Minutes.

THE CHAIRMAN: Can you summarize it?

MR. ESTEY: The late Dr. Frigon says we are in competition for their audience and commercial revenue. Mr. Dunton would not allow the private stations to use a Class 1-A channel even though the CBC didn't need the channel.

MR. COYNE: That is not my point. I am envisaging a station located, let us say, in New Brunswick which is a member of the Trans-Canada Network and carrying CBC programmes to that area of New Brunswick. Now, why is it in the interests of CBC to cut down the circulation area of that particular station?

MR. HENDERSON: May I say this: the CBC in its deliberations must consider its financial position and its ability to perform. It is geared to a financial potential. It is geared to a financial potential, and in its deliberations it must keep in mind what it can do and what its competitor can do, and it thinks in terms of what it can do and not in terms of the potential of both of them.

THE CHAIRMAN: But what it can do is partly done through these private stations?

MR. HENDERSON: Partly done, but to some extent competitive.

THE CHAIRMAN: Let us take Mr. Coyne's

example: you have got the CBC pumping out programmes through station XYZ in New Brunswick on the Trans-Canada Network; there is no competition whatsoever as far as the CBC is concerned in getting that programme out to that area of New Brunswick. The bigger area it gets to the more satisfaction the CBC would have. Why on earth would it want to keep the power of that station down?

MR. ESTEY: Because at that time, and in these Minutes I have referred to, it comes out that the CBC still then held the hope that they would have the only service and they would achieve coverage through their own stations and not through the private stations. An illustration of Mr. Henderson's comment about the economic limitations: I read from page 156 of those Minutes of 1946 where Mr. Dunton is stating in talking about Class 1 channels:

"As to the one in Chicoutimi from what we have seen, as we will be explaining later on, we do not see that it will be economical to raise the power of our station there to 50,000 watts."

Later on Mr. Hackett says:

"To that extent and for that reason we would be taking somewhat less than what was allotted to us under the treaty at Havana?

"A. To that extent, yes. It would be a very small extent. It would be still occupied as a Class 1-B . . ."

THE CHAIRMAN: At any rate the 1946 Parliamentary Committee did not accept this argument.

MR. ESTEY: They were never presented with this evidence. Nothing in the minutes ~~to~~ reveals the cleavage between the Department of Transport and the CBC. This never came to light. While Mr. Chandler is still here if there is anything else the Commission wishes to ask -- --

MR. COYNE: I would like to put one question if you don't mind, and then we can go on to something else. Surely, what happened in Havana was that there was a bargaining confluence and Canada was seeking to get certain concessions from United States and presumably was interested or prepared to make certain concessions. One of the concessions that they wanted to get from the U.S. was the clear use of a number of clear channels which, prior to that time, the U.S. had never admitted that Canada had any right to.

Now, are we not really faced with the situation that, in order to get the clear use of these channels free of interference from the U.S. and subject to the exceptions which the U.S. was able to introduce, in order to achieve that, we had to give up certain things as a quid pro quo. Now you could suggest could you not, that the bargain was a poor one -- that perhaps we should have tried for more, - but how can you really succeed in showing

anything except poor judgment.

MR. HENDERSON: All we can do is show the results and that is what we are doing.

MR. COYNE: You are not suggesting that you are putting before us the complete record of all the concessions that took place at the Havana conference.

MR. HENDERSON: No, we are not. I am saying that the letters show this is what occurred.

MR. COYNE: But you can't pick this out of all the other bargaining factors which were involved.

MR. CHANDLER: On Mr. Coyne's question you suggest, it seems to me, that perhaps in connection with the Class 3 and Class 2 channels there was bargaining with the U.S. for the channels that existed. There was no bargaining with the U.S. insofar as power was concerned. The treaty specifies clearly that power can be used to the maximum enjoyed, and only Canada was supposed to have a limited contour, and there was no need for it because it didn't affect the U.S. one iota whether they used the minimum or the maximum contour. The U.S. I suggest was just trying to degrade some of these stations a little further -- that is the only advantage and it doesn't come into the treaty -- does that answer your question?

MR. COYNE: Well, that is an answer, yes.

MR. HENDERSON: There was some opposition amongst private broadcasters. That opposition is with regard to the attempt to relegate the private stations to the local community level - we don't know their motive, but that is the result that exists.

MR. COYNE: But would you not say that your reference to what the terms of the statute says - and we discussed this yesterday - means that this is the fact which applies to all broadcasting in Canada -- as it has developed under existing legislation?

MR. HENDERSON: No we don't agree with that.

MR. ESTEY: No we don't agree with that. I will go this far with you, Mr. Coyne. In the earlier times that may have been suggested but nowhere has Parliament ever gone that far, and the last shot fired on this point came in the 1946 proceedings from a Socialist spokesman who said "I cannot feel a tremendous amount of sympathy with those stations which are going to lose their wavelengths. It would appear to me that those gentlemen in support of those stations would be prepared to sacrifice Canadian interests -- I mean the interests of the nation as a whole to protecting their own private interests. That, of course, is something typical of private enterprise in any case." Now this last reference, critical reference, to private stations is the last thing on record, and refers in effect to private stations as a kind of second-class citizen relegated to the smaller channels because they were going to sell Canadians down the river, but nowhere can you find any attack on any right or limitation of private

broadcasters to broadcast on any channel in the Parliamentary Committees, so that they didn't whitewash the situation as it then stood.

MR. deGRANDPRE : But on this point you don't intend to leave us with the impression that CFRB in Toronto and CKAC in Montreal and CKLW and so on are all still operating on the 5,000 watts level?

MR. ESTEY : No -- oh no -- we have gone into that. CFRB is on 50,000 watts in competition with WIN of New York to the 300 mile limited and CKAC is on 50,000 in competition with a number of stations that Mr. Chandler has mentioned.

MR. deGRANDPRE : There must have been some renegotiation at one time then - am I right ?

MR. CHANDLER: The channels were all established in one of the many treaties but there was an internal domestic policy that later permitted them to make better utilization of the channels than they were. It was changed in internal domestic policy, that was the way they did it.

THE CHAIRMAN: Mr. Estey, you were discussing with Mr. Coyne the question of, as you put it, being relegated into the position of being community stations. I think that was the phrase you used, "Relegated." You seem to suggest that at some time they had been something else, but do you suggest that the primary function of the private station is not

community service?

MR. ESTEY: No, I am suggesting that the community should be bigger. I am suggesting for instance that a Canadian living in Huntsville should be able to hear Toronto.

THE CHAIRMAN: But you see my difficulty is that the great majority of the evidence that your clients have presented to us across the country, and this has been very persuasive evidence, has been directed towards the establishment of an excellent job in community service which they think they did. Now you seem to be saying that this is unsatisfactory and that this is not what you want today?

MR. ESTEY: No not at all, sir. We say that we are doing an excellent job in community service now, but that in stature we have been held down to being a boy where nature would allow us to grow to manhood and that Toronto, Montreal, and other cities in Canada would like to have large voices instead of little voices on the radio.

THE CHAIRMAN: Well, looking back on the history over the last few years I would say that you have had a pretty healthy growth.

MR. ESTEY: Well, we are very glad to hear someone say that, but we think it should be better.

THE CHAIRMAN: Well, you may have even weakened yourself by unduly speedy growth. It has been extraordinary development of private

broadcasting in Canada, surely, and you ought to be proud of it.

MR. ESTEY: Well, it depends on what you are comparing it with. If we are content to compare it to some less virulent country than ours, it has been extreme growth, but if you compare it to a steel production increase, we have had a slow growth. Broadcasting is not keeping pace in Canada with what it is in other countries which are comparable to it, we say.

THE CHAIRMAN: Well, it depends on the base year that you take I suppose.

MR. ESTEY: I don't think we can add any facts on that point and I don't think the Commission wants to hear us argue out the main theme over and over again.

THE CHAIRMAN: No. What we are really trying to find out is what it is you are complaining of really, what you have not been able to do that you would like to have done, and to do now, and what you are recommending, so that we can recommend it for the future if we so decide. As I see it what you are saying is that you have done a good job on community service and you would like to take over the whole job.

MR. ESTEY: Well, we did not go that far -- to say we want to take over the whole job. We say a bigger part of the job. I think our first sentence in our brief is to that effect that we would like to shift some of the

burden to private industry.

THE CHAIRMAN: Well now just a minute -- shift some of the burden -- that is shifting it or saying it is another way of collecting money, is it not, Mr. Estey?

MR. ESTEY: Well, I suppose that is true of any enterprise that you want to pick in Canada, right down to the meat market. You have to pay for it whether it is on the market or taxes, but you pay one way or the other. We have got to get some level of broadcasting as we have in the meat market or the newspaper industry.

THE CHAIRMAN: Well now, are there any other points -- I think you had some other question?

MR. ESTEY: Yes, I think I mentioned we have paragraph 8 on page 27, actually it is paragraph 7 and 8, where we say full utilization by Canada of television channels will have the same end result -- --- more Canadian viewers being directed away from United States stations and viewing Canadian stations. There is, of course, the serious possibility that if the present artificial restraints are continued, Canada will lose the channels presently assigned to it and these will be taken over by the United States. In Buffalo for example there have been reported efforts to obtain additional channels and it would seem unreasonable to deny the United States

the use of channels available in that area if Canada is not making use of them.

THE CHAIRMAN: Well Mr. Estey, I talked with the late Mr. Brown, I don't think I have his letter here, but he told me that these were treaty matters, these allocations of channels, and that there was no danger, I think he said, of Canada being taken over by the United States, if we did not use them, except by way of renegotiation of the treaty, do you agree with that?

MR. ESTEY: I think Mr. Chandler is better qualified than I am, sir, to answer that.

MR. CHANDLER: I think undoubtedly these things are a matter of international letters or exchange of letters which may be called a treaty. However, a piece of territory like a wave length can only be unoccupied so long, or somebody is going to insist on re-negotiating the treaty. I don't think the U.S. is going to be at all happy to sit by for five or ten years and see these things lie fallow when their citizens insist they could be used.

THE CHAIRMAN: But do you agree, Mr. Chandler, technically speaking you have not got the same problem of interference in television as you have in radio, it is much narrower, a much narrower band of area within which you are working.

MR. CHANDLER: The congestion is not as great as has been in the standards of broadcasting

THE CHAIRMAN : Is that not partly because of the signal in radio, going so much further than it does in television.

MR. CHANDLER: In part.

MR. ESTEY: Mr. Chandler, could we get down to cases now and could you tell us if there is such a thing as a 250-mile separation policy in Canada and if so would you give us the background of that.

MR. CHANDLER: We in our negotiations with the United States Canada attempted to get each station within 250 miles of the border and they attempted to get a 250 co-channel separation, and they wound up I think in most cases with 220 miles.

At that time in the very heavily congested north-east district of the United States the co-channel separation that was decided upon was 170 miles. Now, 170 miles co-channel separation is an extreme separation as evidenced by the dissent of Commissioner Jones in the Federal Communications Commission Report where Commissioner Jones says very lucidly that more efficient use of the spectrum would occur with co-channel stations down to 140 miles instead of 170 miles or instead of 250 miles. There is this factor that in television, philosophy in allocation that calls for a maximum to individual stations results in lower channel efficiency and lower station efficiency means greater channel efficiency. For example, Commissioner Jones in his dissent said that if a location was done about 140 miles separation in the United States one channel could be used in the United States to cover roughly 30 per cent of the country whereas with the current policy only about 15 per cent of the continental United States could be covered with one channel which in our case in Canada we have undoubtedly negotiated ourselves into a position where we have fewer listeners close to the United States border than otherwise might have been the case and that is where we have the greatest demand.

MR. ESTEY: On that point, you will find a reference which might be of interest in the judgment of the Federal Communications Commission

which listed the so-called freeze order in the United States which deferred television listening pending some lengthy hearings on how best to utilize the UHF and VHF spectrum.

THE CHAIRMAN: Well, Mr. Estey, I do not see us getting into the question of whether the channel separation ought to be 250 miles or 220 miles or anything else or the technicalities of such a reference as you are giving. How can we in all good sense?

MR. ESTEY: I would like the Commission though to consider the fact of how things are done in the technical field in the United States as compared to here. Now, these hearings in the United States extended for two years and were public and were threshed out by everybody and the --

THE CHAIRMAN: We are not going to sit for two years.

MR. ESTEY: We are suggesting somebody in Canada should.

THE CHAIRMAN: I think we have people in Canada, technical people in the Department of Transport that are charged with this responsibility and I do not see it is important to get into this.

MR. ESTEY: I would like to read one sentence from the majority report of the Federal Communications Commission which mentions Canada:

"It should be pointed out that Canada as a matter of domestic policy desires service created by large station separations and desires to protect fringe area service to achieve maximum service from each operating station."

THE CHAIRMAN: Which in a thinly settled country with a lot of expenses may be a fairly good idea.

MR. ESTEY: It sounds like a good idea for most of Canada but not for a densely populated strip such as we have along the north side of the lower lakes and in the British Columbia regions. Now, the point I would like to make, I do not want to criticize the technicalities at all but the point I am getting to is, who settled that domestic policy in Canada? Was it threshed out, was the industry consulted, was it referred to the electronics industry on the utilization of its international rights? The Federal Communications Commission held hearings for two years to set it at 170 miles, the figure was 140 miles and Canada without any real explanation we know of said 250 miles. The point we are trying to make is somewhat akin to the general theme that this thing should be centralized into a group which understands both the technological and the operating side, the artistic side of broadcasting.

THE CHAIRMAN: Well, let me ask you this; you may want some different form of technical board set up but you have a department of government today which is charged with the responsibility of determining channels, these technical people are in the Department of Transport, there is a Minister of Transport, has the CARTB gone down and argued this case to them?

MR. ESTEY: Well, the individuals have and they are faced with the rather confused, and I use the word advisedly and accurately, a confused reply from the Department of Transport as to where its jurisdiction ends and the CBC's jurisdiction begins. On top of that we have this joint committee which has no statutory basis, we discover and that straddles the two departments so there is a confusing and difficult atmosphere in which to operate these purely technical problems which must, if anything is universal, they must be.

THE CHAIRMAN: Let me ask you another question; if you read a word or two into section 8 of the Broadcasting Act that charges the CBC with developing a national television service, would they not have to take into account the question of channel separation?

MR. ESTEY: Oh yes, they should, but --

THE CHAIRMAN: And they are charged with doing it?

MR. ESTEY: That is right. We are not

saying the thing is illegal, I cannot repeat that too often, we are saying that the law does not contemplate the situation that now exists. We have a combination of problems which are as applicable to the private broadcaster as to the CBC and there is no forum to balance particular interests, there is no assurance that the industry in Canada has a voice in the formulation of these policies. We have no assurance that the dominant voice is not the CBC operationally as distinct from the CBC guiding or governing and we have no assurance that the Department of Transport is the pre-eminent voice in technical matters which, under the Radio Act, they should be. In fact, we have evidence that indicates quite the opposite is the case. I think that is the thing in a nutshell.

THE CHAIRMAN: Once again, what is it you are after? You would like narrower channel separation so you would have more stations, more commercial stations?

MR. ESTEY: We think the question should be considered by all Canadians concerned in an open discussion on it and the results should naturally be more adaptable to Canada than perhaps a universal policy which covers Labrador, the Niagara Peninsula, southern British Columbia which are all completely unrelated. I have one other technical question to ask Mr. Chandler before we leave that having to do with UHF.

MR. CHANDLER: Before going on to UHF, it may be fairly stated that we are highly interested in the most efficient use of the available spectrum, that is just adding to Mr. Estey's statement. I think that Canada, at the time they decided on the single channel television policy could have performed a masterpiece in statesmanship if they had said that these first stations could be the UHF portion of the band. Most of the available television channels are on UHF, some 70 out of 83 channels. All the receivers sold in Canada to date are only working on the last 12 channels and now a UHF station coming into an area where there are a great number of television receivers would face starvation if we had a UHF transmitter because there would be no receivers available to start off and it might take 10 or 15 years before that could be developed and then develop an audience. I think by our policy of putting our first stations on the lower 12 channels that we have for the foreseeable future lost the use of 80 per cent of these available television channels. And now, UHF works, for instance, in Portland, Oregon the first television station was a UHF on Channel 27, in a matter of a year apparently about 60 per cent of the sets were compatible to receive all channels. On the other hand, the city of Seattle, their first television station was Channel 5 and the result is that Seattle has a saturation of

receivers but none of them will receive UHF. So, had Canada taken its initial stations and said, "We are going to have an exclusive monopoly for some two or three years but in turn for that we want you to keep part of the VHF spectrum", we would have receivers in Canada capable of receiving all 82 channels instead of 12. It is a serious proposition.

THE CHAIRMAN: It may be serious but that milk was spilled long since so why cry over it now? What purposes are in it, what do you suggest should be done now?

MR. HENDERSON: Nothing. Perhaps it is not clear what we are trying to do here, we are saying questionable decisions are made, decisions made before we have had an opportunity to make representations and have our voice heard. Now, we are drawing this to the attention of the Commission to show that decisions have been made which probably, and I go no higher than that at the moment, that perhaps they operated to the detriment of the public, not to our detriment at the moment but to the detriment of the public. We think if there is a board which is an independent board and inside it our voice is heard that perhaps these questionable matters will be given public debate and will not be made. That is what we are urging.

COMMISSIONER STEWART: When was television

introduced into this country?

MR. ESTEY: 1932 --

COMMISSIONER STEWART: On a commercial basis.

MR. CHANDLER: Sometime in the last three or four years.

COMMISSIONER STEWART: To what extent was UHF in use at the time television was introduced here?

MR. CHANDLER: It was in a comparatively small use because that part of the spectrum was never used up until 1952.

COMMISSIONER STEWART: But there was very little use of UHF in the United States at the time we started into television?

MR. CHANDLER: Very little because most of the early stations had been applied for prior to the opening up of UHF spectrum which was in 1952.

COMMISSIONER STEWART: After we started in this country?

MR. CHANDLER: No, before we started.

THE CHAIRMAN: Wait a moment, these dates are not right, surely the suggestion that television in this country was -- what was the date actually the first station started? September, 1952 but plans must have been made to go ahead with it a year at least before that.

MR. CHANDLER: This Federal Communications Commission Sixth Order and Report which opened up the

freeze, for several years television stations in the United States had been frozen, no more under construction and this freeze was opened by this report of April 11, 1952.

THE CHAIRMAN: When did the engineering start?

MR. DUNTON: We were just starting to operate in the Spring of 1949 and the engineering was some time before that.

THE CHAIRMAN: So at the time the Canadian decision was made for the VHF rather than the UHF, the UHF had not been opened up, is that correct?

MR. DUNTON: That is correct.

THE CHAIRMAN: Mr. Henderson, do you suggest it could possibly have made any difference on this UHF point under the circumstances --

MR. HENDERSON: I am sorry Mr. Chairman, I was looking for some papers.

THE CHAIRMAN: I will repeat it I am simply saying and again, I repeat, the engineering was started, therefore the decision was made, at least, prior to the year 1949. Mr. Dunton has just stated that the UHF frequencies were not opened up until 1952. How could an independent board, such as you suggest, possibly have made any changes in that decision?

MR. HENDERSON: Somebody made a decision in 1949, that decision must have been made on the basis of the best technical knowledge of the time. Perhaps, then is the time when the representation ought to have been made. Canada was under an injunction, as I understand it, from the Massey Commission to move slowly, at that time, as I see it they wanted to get the best information as to the future.

THE CHAIRMAN: Do you mean they should have forecast in 1949 what was going to happen in 1952?

MR. HENDERSON: I don't know, those are matters of engineering knowledge of which I have no information but, perhaps, the decision would not have been made had they the full story explained to them in 1949.

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COMMISSIONER STEWART: It might have delayed the introduction of television in Canada for another few years because it was not until 1953, three years after, the complaint has been made that there was insufficient knowledge, that not enough was known about the authorized frequencies to even attempt it in the United States. We have heard a variety of things about the government having retarded the introduction of technical development but here you are saying it the other way.

MR. ESTEY: We have not made ourselves clear if that is the case. All we are saying -- and I don't like to keep using the Federal Communications as an example, but on this point it is the original example and let us amplify it. The Federal Communication Commission's development of television should be appraised. In 1949 they started out to re-appraise it and, no doubt, this Commission is well aware of the details and during that time the CBC was having engineering work done preliminary to coming on the air on 1952. What we say is when the FCC came out in April, 1952, and said here is the BHF and the UHF, and, remember, both were frozen. About that time Canada was coming out -- well, the public was interested, with a plan. I don't like people who at second glance use hindsight and we are not saying the CBC was in fact wrong, what we are saying is that, the Canadian set-up is wrong.

THE CHAIRMAN: You are seeking to show

that the set-ups are wrong and bringing out a specific example for BHF instead of UHF, and when we dig into it we discover the difference in cost. But UHF was not available. How is that an indication that the statutes are wrong. Because nobody could have done anything different.

MR. HENDERSON: May I bring it down to something I understand better. UHF does not mean enough to me to be able to deal with it.

THE CHAIRMAN: Don't get off this point because as far as this is concerned you are putting forward this UHF argument.

MR. HENDERSON: Then I will hold this until UHF is finished.

THE CHAIRMAN: It seems that sooner or later we have to get down to something that is relevant. You are arguing that this UHF position would have, somewhere, been different or might have been different or, perhaps, to use your words might have been different if there had been an independent board. We now discover the time at which the decision was made the U.S. frequencies were not available.

MR. ESTEY: Surely, that cannot be the whole case. When the decision was made -- that, to me, is ambiguous. What decision? The decision to go ahead with television was 1949. When that decision was made in Canada the United States was, apparently ahead of us in technology and said,

"Let us have a look at UHF", but we didn't.

THE CHAIRMAN: You don't know whether we did or not.

MR. ESTEY: No, that is why I am complaining. Perhaps if I knew I wouldn't have a case. Let us get the timing. In April, 1952 they came out with a two-year study of a well examined problem. In September, 1952, we come out with BHF. Maybe we were right. I don't know if we were right or not and all I am saying is that in 1949 when the U.S. technicians were examining other aspects of the field and we have no technicians in Canada, and all I am drawing from that -- and we gave three illustrations, all I am drawing from that is that we think Canada would be better represented, better controlled, and regulated if there was a board in which these affairs could be debated and examined.

THE CHAIRMAN: If you are using it as an illustration, and based on the facts, there couldn't be any difference.

MR. ESTEY: That is where our minds cannot meet because in 1952 we had the benefit of the U.S. knowledge.

THE CHAIRMAN: You are not suggesting in 1952, with only three years of preparation --

MR. ESTEY: It had been well publicized all during that period. The New York Times had printed what was done and what was going to be considered and probably what was going to

happen and we don't know whether it was examined in Canada or absorbed or what was happening.

MR. CHANDLER: It leaves me cold that in six months plans might be made to establish a television station.

THE CHAIRMAN: Are you suggesting when the decision came out in the United States in April, 1952, it was then a wise and safe decision for Canada to have shifted at that stage without any experience available from the United States in the UHF rather than stay in the VHF?

MR. CHANDLER: In the interest of making sure that receivers in Canada would receive all the channels available for the public of Canada I think, it would have been a very cheap risk.

THE CHAIRMAN: That is your point.

MR. HENDERSON: The point we are making is as to the densely settled areas of Canada. We are not suggesting stations should be restricted, but as a matter of public interest and I would like to read what was in the Telegram about UHF, because there is quite a bit made of it in the U.S. This is October 3. WBUF. That is in the NBC Channel 17 in Buffalo and it is WBUF.

"One other matter claims the attention of the club these days. It is WBUF's increase in power to 500,000 watts. Since the power increase went into effect last Sunday, your chairman has been receiving Channel 17 as clearly as Channel 4.

Channel 17 is aiming for another power increase in January (to 1,000,000 watts), and intends to increase its present antenna height of 670 feet to 740 feet.

A few members have been getting Channel 17 without any converter on their sets, but they've been luckily located. Generally, converters are necessary.

There is a possibility two other Buffalo channels will be on the air in a year or so -- 7 and UHF Channel 59. Engineers believe there is enough megacycle separation between Channels 6 and 7 to avoid collision."

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What I want to point out is that this is a very fast developing technology and we are up against a very healthy competitor for Canadian television viewers.

COMMISSIONER STEWART: Isn't there some kind of a contradiction in the argument you are putting forth? First of all you say, by reason of the place in which control is held, that is the Department of Transport and the ECC, we have been slow in Canada in development. Here we are in 1956, and I take it, very few UHF channels are being used and only coming into Buffalo now and you are, apparently, arguing we should have UHF channels and if that were so, we would only be coming into television now.

MR. ALLARD: With all due respect, sir, I cannot accept that because the evidence is that as soon as this freeze was lifted in the United States, there was transmitting, and asking in all parts, for ultra high frequency and it was immediately available and has been available for 4-1/2 years.

THE CHAIRMAN: You tell me there was request for UHF and UHF is just getting started.

MR. ALLARD: This is only one station, Buffalo.

THE CHAIRMAN: Where else? *Am*

MR. ALLARD: They are still filling up the CHF band and at the same time going off on to channels in Buffalo UHF.

THE CHAIRMAN: In other words, if we ^{have} have

abandoned VHF we probably would have moved a little faster on UHF.

MR. ALLARD: We are not suggesting you abandon anything. In the UHF report the figures are staggering. As Commissioner Jones has pointed out, there are only 700 possible stations in the United States, 700 cities that can have stations and only 880-odd can only have one, so even with that big development VHF is only finally pushing out into the UHF, and that is our only point:

THE CHAIRMAN: We have that point, thank you. Now is there anything more Mr. Chandler you want to deal with?

Mr. Chandler, I didn't think it was possible, but I think you have given us, at least, an inkling of the highly technical matters. Thank you very much.

MR. CHANDLER: Thank you. I appreciate your tolerance in going through this long raggedy intercourse.

THE CHAIRMAN: Now, Mr. Coyne, do you want to go through this first part? I take it the technical parts have been covered and we can, perhaps, miss this and refer to only the points you would like to mention.

MR. COYNE: I would like to ask a few rather general questions arising out of the evidence yesterday. I think Mr. Estey said if a Canadian Communication Television Board were set up that the

private stations would have no objection to CBC competition. I presume he means commercial competition?

MR. ESTEY: All kinds. Audience competition and so on.

MR. COYNE: Does that mean, for example, that you would feel that the CBC are now, so that we understand the limits, the types of commercial business which it goes after, I am thinking particularly of radio in the local field and where CBC has its own stations they would compete vigorously for local advertising.

MR. ESTEY: Is the question could they, or do they, or should they?

MR. COYNE: Should they?

MR. ESTEY: If that area is regulated in the public interest by a tribunal operating its own facilities, the answer is an unqualified yes.

MR. COYNE: This tribunal would have no control over business.

MR. ESTEY: That is up to parliament. We think they should have control over the thing they put on the air.

MR. COYNE: I am speaking of commercial revenue. What I have in mind is this. We have heard it before that the CBC now limits itself in seeking revenue in the commercial field with the exception of CJBC, in Toronto, of large class network advertising where it has a local station so, in the city of Winnipeg, that station does not

solicit local advertising. Then do you infer that provided there was some kind of developed form of hook-up, there would be no logical objection to the CBC competing to the extent that it desired commercial revenue in any location where it might have to be operated.

MR. ESTEY: May I answer that this way. It is a matter which the Board could determine itself. We may oppose any application by the CBC. Individual stations may oppose any application by the CBC to the extent of those services in that field. I won't say we won't and I won't say we will. That would be a matter which would be within the purview of the independent board and we would accept that after a public hearing.

MR. COYNE: It is not a power that is in the hands of your local board within your statute. I suggest to you it is purely an internal matter for the CBC and at the moment they don't choose to seek advertising in the local field. Presumably that is their position and they could change their minds at any time and is there any reason why they shouldn't change their minds?

MR. ESTEY: To answer your question directly, we are quite happy to welcome wide open competition of the CBC.

THE CHAIRMAN: Just a moment, before you leave that, do you abandon your suggestion about appearing before the Board?

MR. ESTEY: I cannot bind individuals --

THE CHAIRMAN: Also, you have in your statute, and it is a very careful statute, giving the power to regulate commercial competition.

MR. ESTEY: That may be, but in any event Parliament has the power and should have that power, certainly, that is not a matter we are opposing, but what we are interested in at this stage is that the Board has as wide powers as Parliament may see fit in its wisdom to give in terms of a policy. We cannot anticipate what that policy is going to be.

THE CHAIRMAN: You are putting up a proposal for a board and in order to know what you mean we have to know what kind of board you want. You haven't been putting up a kind of board you want, giving it the power to deal with advertising policy? Do you want that to be in?

MR. ESTEY: Of course, we have no objection to that being put in.

THE CHAIRMAN: That is not the question. Of course you have no objection. Why would you? But if it is such an important thing I would suggest it should be put in.

MR. HENDERSON: May I draw your attention to paragraph 12 of Section 21. The Board is given power to prescribe the proportion of time relating to advertising on broadcast programmes through regulation it would adopt.

THE CHAIRMAN: Which section is that?

MR. HENDERSON: Paragraph 21, subparagraph 12 on page 13.

MR. COYNE: Surely, that would be a regulation of general application, wouldn't it? You are not suggesting this Board should make regulations dealing with specific stations or groups of stations?

THE CHAIRMAN: That is only to prescribe the proportion of time relating to advertising on broadcast programmes. It has nothing to do with whether -- that would be, I suppose, a maximum amount of advertising time, and if that was established, as Mr. Coyne suggests, on a general basis, then that would be the limit of the Board's power to regulate the time, and if the CBC wanted to go ahead and sell that time, they would be able to do it?

MR. ESTEY: They could. Page 24.

THE CHAIRMAN: So your suggestion of appearing before a board to oppose this would be invalid?

MR. HENDERSON: It would not serve any purpose.

MR. ESTEY: The answer to Mr. Coyne's question is found on page 24 in our brief where we say ^{very} flatfootedly we favour competition.

MR. COYNE: I would like to put this situation to you for your comments: a private commercial operator is dependent wholly for his income upon advertising revenue and, in order to stay in business, he has to recover from his advertisers at least sufficient funds to pay his costs. The CBC is not in that position: They have at the moment large amounts of funds from public sources, and the commercial revenue they derive is relatively a small part of their total revenue. Any increase in the CBC's advertising revenue presumably makes it less costly for the taxpayer to provide the particular service the CBC is providing at that time. For example, if the CBC wanted to go into a local city and derive revenue for this purpose is there any objection to them cutting their normal logical card rates in half for the particular purpose of taking away business from a private station in order to increase their revenue and thereby reduce the drain on the public purse?

MR. ESTEY: We like to deny a lot of things, but we don't deny that we are human. If the Government of Canada established a newspaper in Montreal and sold it for one cent in order to cut the private income, every newspaper in Canada would be up in arms. If they went into Winnipeg and said, "We are going to sell these soap programmes or the Toronto Symphony for one-fifth of

one per cent of what CKOY or CJOB would charge", they would be up in arms.

MR. COYNE: Why?

MR. ESTEY: Because we would be paying income tax to satisfy an uneconomical proposition in unfair competition.

MR. COYNE: Why is it unfair? The CBC would not go so far as to drive the local station out of business because the local station is performing a function it should continue to perform. So, they would not drive a local station out of business, but why, without going that far, should they not seek to reduce the cost to the public of the CBC service by getting any advertising revenue they can whether it is fair or unfair on any general principles such as you are referring to?

MR. ESTEY: If the Department of Justice in Ottawa offered to probate estates for one-quarter of the tariff of the Carleton Law Society, what would you, as a practising lawyer, think?

MR. COYNE: I don't think it is comparable.

MR. ESTEY: Why isn't it?

MR. COYNE: Because it is not a policy which the government has seen fit to adopt or has been seriously suggested, that they should have their Department of Justice engaged in the probating of estates. If they decided it was fit and proper, I might have difficulty in accepting your suggestion.

MR. ESTEY: If they did decide it was

proper, you wouldn't go up and put them on the back?

MR. COYNE: Let me put it this way: you suggest it is unfair; how do you propose it should be controlled?

MR. ESTEY: Well I am not really much in fear of it ever happening because for all that we might say about the CBC, or which we might be deemed to say, I never lose sight of the fact it is a Crown corporation and that parliament will review it, and if anything as outrageous as that were to happen we would be in before the Parliamentary committee, and CBC would not have a defence.

MR. COYNE: It need not be so outrageous. They are not going to charge one-fifth of one per cent of what the other fellow is charging, but they may charge 75 per cent. That is not necessarily outrageous if the result is that the public taxpayer is not being called upon to foot as much of the bill.

MR. ESTEY: I think we will still lick them because we will get the audience.

MR. COYNE: Wouldn't it follow logically that this board of yours should have some control over rates?

MR. ESTEY: I don't think it logically follows, but I don't want also to be in the position of having to say it should or should not.

MR. COYNE: Well I would like to come on to this point: you have been recommending the adoption of the Canadian Telecommunications Board as a separate regulatory body and have given submissions related to that recommendation. Have you anything to say or recommend with respect to the operation of the present system assuming that for one reason or another parliament did not adopt your recommendation of the independent regulatory body? In other words, are there any improvements you would like to see in the present system if it continues to exist?

MR. ESTEY: Well, I think that is highly relevant that you should ask that. As to how much time I should devote to it I am not sure but, first of all, I would say this, that we are 100 per cent all out for the independent type of board. We think medical science and jurisprudence and practical science and everything else augurs for an independent board. If we don't carry it today, there are obviously a lot of things which as taxpayers, and not as broadcasters, but as taxpayers we think might be considered, and one thing is this enormous cost which the CBC seems to be running towards.

MR. COYNE: If I may interrupt for a moment, it may be of interest to hear what you might have to say as taxpayers, but I think you are coming before us as broadcasters and as an

association of broadcasters, and before you go on to the other point, if you wish to, could you say something about what you would like to see as broadcasters -- or is it fair to assume that, by and large, you are reasonably satisfied with the existing situation, assuming no independent regulatory body?

MR. HENDERSON: No, but I think our brief does deal with other phases of the matter. We deal with network, and certainly the present regulatory system itself, in my opinion, deserves to be entirely overhauled. I don't think that the system as it presents itself now, where an individual within the department has control over the destiny of a substantial industry should remain.

MR. COYNE: An individual in which department?

MR. HENDERSON: In the Station Regulations Division. I think an examination of the Station Regulations Division is in order to see whether or not he is acting within the scope of his authority, and that the board has power to allocate to him the very wide powers he is exercising. Moreover, I think there is a danger of empires within empires. I am told within certain areas a broadcaster may have an authority from the Station Regulations Division authorizing an act, but that the individual representative of the CBC vetoes that authorization on the spot and the broadcaster is left in a complete state of confusion. Empires growing

within empires, and lack of clear-cut control deserve consideration. Those are matters that I would like to see looked into. I am dealing with matters beyond the purview of our mandate from our board because we have been asked to make submissions on three phases of the matter, and I am dealing with that because in my investigation of the subject matter it would seem there are other matters that deserve consideration.

THE CHAIRMAN: It may well be that you and your immediate colleague, Mr. Estey, as legal representatives of CARTB are limited to certain specific points; I can understand that. However, you have with you the President, the secretary, the manager, and a dozen other members, and if they prefer to answer, it is perfectly all right with us. I think the sort of thing Mr. Coyne has in mind is this, that you put up an argument in favour of a separate regulatory board, and you have done it with great force and emphasis and skill, and we have to consider that. Our decision is either going to be "Yes" or "No". If it is "Yes", well, you have got your point. Our question now is, if it should turn out to be "No", have you any suggestions within the present framework of the kind of set-up, not two boards but one board, which you would like to suggest to us? For example, have you any suggestions about the constitution of the Board of Governors? We have had some

suggestions quite seriously put forward, I think by private broadcasters, that they ought to have one or two men on the board. Does CARTB want that?

MR. HENDERSON: No.

MR. COYNE: The answer to that is no.

MR. deGRANDPRE: It is on page 28 of the brief.

THE CHAIRMAN: All right, go on and give us the sort of thing we have in mind. Have you any suggestions, for example, such as, assuming the general framework is the same, recommending, for example, that CBC licenses be matters of public hearings?

MR. HENDERSON: Yes, I can answer that, definitely yes. In response to that specific question, "Yes". The question is very broadly put, and perhaps it didn't suggest to us the questions you are now asking, but as to the specific questions perhaps we can give some answers. May I make this word of explanation, however: it is not that we want to dodge questions, but I should point out that, after all, this is a somewhat composite group. We have network members and non-network members and perhaps in our answers we may give an answer that would be acceptable to one group and not acceptable to another. I make that comment to show that we have to consider members at large rather than individual members within the group, but certainly

insofar as a question such as you put is concerned, the public hearing of CBC licenses, on a question of that kind I believe we can answer, and the answer I have already given.

THE CHAIRMAN: Just going on, I can see why you have an opinion that it would not be appropriate to have a member or two on the Board of Governors, but is there any other kind of technique that could be adopted? Something on the line of the Danish or French law -- would you think an assessor representing the interests of the private broadcasters sitting at the hearings of the Board of Directors would be of any value?

MR. HENDERSON: Well, it is of some value, but I don't think it would solve the problem. He would have a voice, but the question of his power would come into play. A great deal would depend on what his function was when he sat with the Board. At the moment I don't see how it would solve the problem because it still begs the question of the independent tribunal making the decision. At least it does this: at least I suppose it gives the private broadcasters some opportunity to have that view presented, and to that extent it is a step in the right direction.

THE CHAIRMAN: Can you answer this question in connection with licensing as presently conducted --and the hearing concerning licensing before the Board of Governors -- I suppose it does happen that sometimes there are objections to the granting of new private licenses which would come from the other private broadcasters?

MR. HENDERSON: Oh quite true and they do, often.

THE CHAIRMAN: So that one can see the difficulty of having a man representing the whole group.

MR. HENDERSON: The opposition -- yes.

MR. COYNE: Just one other specific proposition that has been put to us, which you may or may not be in a position to answer -- that you were referring generally a moment ago to this point, and that is the suggestion that the matter of broadcasting regulations which is now within the jurisdiction of a branch of the CBC, which we are informed is called Station Relations and Broadcast Regulations, and that the two functions of that department at present should be broken up, and the broadcasting regulations be place directly under the jurisdiction of the board of governors, rather than reporting through management as it does at the present time -- --

MR. HENDERSON: Yes. I think that is right.

MR. COYNE: I may say in fairness on page 28 of your brief you refer to this suggestion,

as one of the things which you say are usually impractical -- this is paragraph 8 on page 28.

Perhaps if you are in a position to answer you might answer in the light of that sentence on page 28 of your brief.

MR. HENDERSON: I am sorry, which sentence do you have in mind, Mr. Coyne?

MR. COYNE: The sentence reads "even some of the briefs which opposed a separate regulatory body recognized these facts by suggesting many kinds of changes, usually impractical, such as representation of private stations on the board of governors, reporting by the station regulations division of the corporation directly to the board (which is the corporation) right up to and including a right of appeal from decisions of the corporations board.

MR. ESTEY: And the question is "Why are they impractical" ?

MR. COYNE: Yes, well specifically this station relations and broadcasting regulations suggestion?

MR. ESTEY: Well, it might move somebody further down the hall and put a different name on his door, but it is still the corporation that is doing those things, and we don't think that is getting at the problem at all. That is recognizing the problem but failing to apply the cure. That is our submission.

MR. COYNE: That is you state in effect

that no real distinction can be drawn between a portion of the CBC that can do the regulating and another portion of the CBC which would in fact do the operating?

MR. ESTEY: Not so long as they are responsible to the same general manager or the same board of governors and I don't see how in the world you could split the board of governors in half. You might form another corporation, but while you are doing it, we suggest you can make it into an independent board. We don't see anything short of that.

THE CHAIRMAN: Well you also spoke yesterday, Mr. Estey, I believe, about the problem one runs into frequently, in connection with interpretation of the regulations -- that there was no method of interpretation. I would like to ask you what you think of creating an enforcement division which would permit, instead of this rather cumbersome and rather severe penalty of suspension of licensing, to put in a provision which would allow for proceeding presumably on a summary conviction for breach of regulations, and then, at any time you couldn't agree on the interpretation, you would always be able to take the case in court -- would this be an improvement?

MR. ESTEY: Well, it would be an improvement, sir, provided, of course, the corporation had the same treatment, because we think this situation is such that we have to call a spade a spade.

THE CHAIRMAN: Oh yes, that is true.

MR. ESTEY: One of the Toronto stations for instance in the corporation, had a man down there who did something of this sort and who will lay the charge in a case like this -- who will lay the information for a summary conviction?

THE CHAIRMAN: Oh I think you can make the station manager responsible and he can get the matter decided -- it is a matter of interpretation.

MR. HENDERSON: But what you propose is the type of thing certainly that I visualize, which would enable a real test of interpretation to be made.

THE CHAIRMAN: Would it not go between them -- the suggestion is for an additional penalty provision for the enforcement of regulation -- I don't want to flip in the back door.

MR. HENDERSON: As long as the penalty is realistic for any direct offence -- I don't think anybody has a right to complain -- there is a real test as to whether there has been a breach.

THE CHAIRMAN: Would it not have the effect of making people who are drawing the regulations, if they knew they were likely to come up in court, be more careful and accurate in drawing them -- would it not have that advantage?

MR. HENDERSON: Yes, that is correct. It would have that advantage and it would also

be true in respect of having some individual's authority as well -- and I think it would have to have a salutary effect.

THE CHAIRMAN: On the general question of improvement, I suppose you would agree that if we have regulations they ought to be enforced?

MR. HENDERSON: Oh yes, definitely, they have to be enforced.

THE CHAIRMAN: At the present time there is no provision for the enforcement itself, except by the suspension of licenses.

MR. HENDERSON: Yes, or something that I don't fully understand, what is called a black mark. Apparently there has been some system where there has been a breach, when I am advised that the head of the station relations division will write to the station and say "well, you were in breach, you now have a black mark". Now I take it that if you have so many black marks then suspension will take place. When you have so many black marks presumably you are out, something in the nature of so many parking offences.

How many, I don't know -- what is the effect of the black mark, I don't know, and it seems to me his determination of a black mark means that I have no way of testing whether he is right or wrong, and I might end up with five black marks, none of which have been adjudicated upon. That is the system as I understand it.

THE CHAIRMAN: And I suppose it would

be better in your opinion to have black marks consisting of convictions on charges which have been fought out.

MR. HENDERSON: Yes, if I am in breach it should be the rule of law, and if I am in breach, I suffer the consequences.

THE CHAIRMAN: I take it from what you say that CARTB would not be opposed then to the suggestion that a new penalty provision be created for the enforcement of regulations by way of summary convictions -- by whatever is the approved method.

MR. ESTEY: Well, yes, in principle.

MR. HENDERSON: In lieu of suspension.

THE CHAIRMAN: Well, perhaps you get a suspension for a really flagrant case, of course, and you have to have certain hearings such as those which now exist -- I suppose that suspension is certainly the ultimate thing.

MR. HENDERSON: You would have to have something remaining, because it would be ridiculous to have sixteen convictions with sixteen penalties of fifty dollars per violation.

In fact you might be able to sell a violation for more than the penalty.

THE CHAIRMAN: You understand I am not opposing your views -- I just wish to put this conception to you for your views.

MR. ESTEY: It seems to me that there is one thing wrong with that and that is this. The administration of broadcasting,

including the punishment of an offender, should not be resolved in a magistrate's court. It should be the rule of law.

All these issues are not as dry and as narrow as the usual issues you conduct and I think that the enforcement of the regulations would be better carried out from the point of view of a crown corporation and the private broadcasters and the public, by a body which is trained in that field.

It seems to me that there should be a penalty and some punishment of the guilty party, but that this should not be left to the several hundreds of magistrates from coast to coast subject to varying interpretations and so on.

THE CHAIRMAN: Have you any suggestions as to whom it should be left to?

MR. ESTEY: In the present set-up it is difficult for me to make a suggestion because the logical one would be to go back to the boss of the man who made the offence.

THE CHAIRMAN: But suppose you had the new set-up.

MR. ESTEY: You mean we have set up a board to adjudicate?

THE CHAIRMAN: Would you not be back in the present position -- you have a board making the regulations and sitting in judgment at the same time, and there you'd state is a conflict of interests and duties.

MR. ESTEY: Oh no I don't say that at all. The board has got to make the rules

we think, in every field of provincial and federal administration -- the board of transport commissioners lays down the rules and they have certain cases upon which they have the right to punish if it is serious. Of course, if it is serious you can go to court, but perhaps there is a line you can draw where you do get into court, in the matter of offences under the broadcasting act. However, there are a lot of these regulations which concern offences not entirely against the public interest in the sense of a crime -- that is the point I am making.

THE CHAIRMAN: I think I see your point, Mr. Estey but let us take the regulation for instance, which says you can only have so many broadcasting spots in a quarter of an hour. There is surely no problem there which a magistrate could not try, is there?

MR. ESTEY: I think there is no problem provided it is clear and it does not vary from coast to coast, from the Maritimes to B.C. -- I suppose a spot in B.C. is the same as a spot in Newfoundland.

However, it seems to me that this is not quite that simple.

THE CHAIRMAN: Really I think there is merit in looking at this suggestion of creating a pecuniary penalty for a breach of a regulation -- but if you have regulations they ought to be enforced by some kind of

punishment that fits the crime, so to speak. Have you any case to help as to any other place than the magistrate's court to which this might go. If so, we would be most appreciative.

MR. ESTEY: Well, I think this is a field where it could go to the criminal court in some cases, for instance under the FCA in the U.S. -- they don't have any intermediate statute, and I think that is a weakness on their part, perhaps because they don't know how to enforce it. However, I think there is a realm in which you can say it is a prima facie crime and, therefore, is triable in court. But I also think you have to consider that there are crimes which are in the realm of being against the public interest and which should be subject to a penalty to wake them up, but it should be a criminal conviction.

MR. HENDERSON: Just to show that our representation is not rehearsed I prefer the magistrate's decision, but I do approve of the tribunal, which is an independent decision, and is an independent tribunal. That of course in my opinion solves a problem, although I fully appreciate that there may be difficulties to which Mr. Estey refers.

THE CHAIRMAN: I would not want to draw a conclusion, Mr. Estey, that you are less successful before a magistrate than Mr. Henderson is --

MR. HENDERSON: Oh, I would not suggest that. In any event, I would suggest we are on

common ground in that the tribunal is an independent tribunal and whatever form it takes, that is a step in the right direction.

MR. ESTEY: Yes.

MR. COYNE: But you don't see any objection to an independent board both making and enforcing regulations?

MR. HENDERSON: Yes I do.

MR. COYNE: In the sense in which the Canadian Bar Association apparently feels that it was improper with respect to aircraft regulations.

MR. HENDERSON: Well, I think that this was an improper situation, the one that the Canadian Bar Association referred to -- that was an improper situation.

MR. COYNE: They took exception to it.

MR. HENDERSON: Oh certainly. The one the Canadian Bar Association referred to -- is an improper situation where one man is making regulations who also has the power to suspend the license. That is the very thing that exists here in the industry, which we object to.

MR. COYNE: But the very thing that would not be cured by the independent regulatory board?

MR. HENDERSON: Making the decision.

MR. COYNE: And having the board?

MR. HENDERSON: That is correct.

MR. ESTEY: Of course, we have not discussed the right of appeal.

THE CHAIRMAN: On that, if we can take just a moment before we adjourn for lunch, I would say that probably no one would say the right of appeal is not a good thing, I mean any fair minded person says the right of appeal is a good idea. I think the difficulty in this case is the one you touched on a moment ago in connection with the magistrates, the difficulty is to find an appropriate place to which an appeal can be taken where you get a certain amount of informed background and technical knowledge and the like. Have you any suggestions. I am presuming the present general framework continues as to how a right of appeal could be created which would be effective.

MR. HENDERSON: I think a great deal would depend on what is to be appealed. I can conceive of some things where the appeal could take a different form than others, the suspension of a license and major matters of that kind.

THE CHAIRMAN: I think we have an appeal now which is probably as good a one as you could get.

MR. COYNE: Only on a question of law.

MR. HENDERSON: Yes, on a question of law only.

THE CHAIRMAN: But I mean, let us take for instance an issue which probably would be one of the most difficult, the question of the granting or refusing of a license of a new application which now has a hearing with the Board of Governors, what machinery have we around the country that can hear an appeal from that kind of decision?

MR. ESTEY: We seem to have a ready-made Canadian answer to these things, I personally do not favour it but there it is. It is this, if it is a matter of fact you are dealing with in these problems you take that to the Governor in Council but if it is a so-called question of law or jurisdiction you can appeal that to the Exchequer Court or the Supreme Court of Canada. I do not know, the trouble with that here, if I had to argue that here I would have to argue against myself which is not as tough as arguing with Mr. Henderson but it is a problem. I would say here, in order to have the material made clear on a technical matter to the Cabinet it is not going to be qualified and has not the time to go into it. However, I think on the question of jurisdiction which really the lawyers expanded on so we are safe, I think that kind of an appeal should go to the Exchequer Court.

MR. COYNE: I suppose on the matter of appeal on the question of fact there is perhaps an

approach to the Cabinet as such, and that is the Minister of Transport.

MR. ESTEY: Yes, that is true.

MR. HENDERSON: That exists now, as you pointed out to me the other day, to a degree that exists now.

MR. ESTEY: The American system is a little different, they have two rights of appeal, one from the FCC direct to a federal district court on some question of law and some question of facts; also they have a much more frequently used method of tagging a decision, they sue the FCC itself and get it into court on a writ and they have a tremendous amount of law in the United States on these things ^{and} it is very clear. This has worked very well.

THE CHAIRMAN: Worked very well for who?

MR. ESTEY: Well, I do not know that that is an indication of the system, it could certainly work very well with the National United States. Certainly in the United States, if you are up in the North Pole and if you want to hear Adlai Stevenson you can hear him but you can get not too far from Toronto and if you want to hear something in Canada you cannot hear it. I start from that and examine the United States system and I find one reason is the push and pull is all out in the open.

THE CHAIRMAN: It might also be that they have quite a bit more money.

MR. ESTEY: That was true in 1932 but we are doing all right now.

THE CHAIRMAN: Well, on this question of right of appeal which is one we have had very little evidence on, speaking personally I am sympathetic towards the notion of a right of appeal but the difficulty I run into in my own mind is how you can make it a practical right of appeal and I would like to hear you if you have any suggestions. We will adjourn now until 2.30.

---The hearing adjourned for lunch at 12.50 p.m.

---Upon resuming.

THE CHAIRMAN: Where did we get to, Mr. Coyne?

MR. COYNE: Well, Mr. Chairman, I would like to turn to page 4 of the supplement 16 and discuss briefly with Mr. Henderson something that he dealt with in general terms yesterday. In setting forth your submission as to the competition which exists between the CBC and the private stations you point out that: the CBC is in competition with private stations, it has an interest against its duty and regulation of them in adjudicating matters concerning them. Then, further over on page 8 you say:

"As we have seen above, the CBC is placed in the invidious position of having an interest against a duty."

Could you describe for us what the interest of the CBC is in these matters which is in conflict with their duty?

MR. HENDERSON: Yes, I will be glad to; the interest, as we conceive it, is in the operational sphere. The CBC does in fact operate broadcasting stations, it is in the commercial business, it controls and, in fact, has a monopoly on networks, it is in the business of broadcasting, actively engaged in that business and in that sphere. In the five categories we have outlined it is, in our opinion,

in fact in competition with another group of independent units that are actively engaged in the operational sphere. Its interest is in maintaining and in operating efficiently, enlarging, because they, being human, each individual in his job is seeking to carry out his function in a certain way and is attempting to, in our view, operate it to the advantage of the operational unit he has interest in.

MR. COYNE: Let me interrupt you there with another question, what is its interest in expanding its business, to use your phrase?

MR. HENDERSON: Well, its interest is in retaining a certain audience to enable it to carry out its business, if it does not have that audience it cannot effectively carry out its business so that its interest is to enlarge the audience.

MR. COYNE: Why?

MR. HENDERSON: Well, certainly --

MR. COYNE: What does it care what its audience is, if it is losing its audience it might change its programmes in order to try to improve.

MR. HENDERSON: Well, if it does not care what its audience is I do not know what it is doing in the business. As I see it, it is seeking to serve a group of people in this country.

THE CHAIRMAN: That is its interest, Mr. Henderson.

MR. HENDERSON: Yes, its interest is to

serve a group of people.

THE CHAIRMAN: Is that not its duty also?

MR. HENDERSON: No. Its duty in respect of this determination of a right held by a broadcasting company, we hold a right.

THE CHAIRMAN: What right do you hold?

MR. HENDERSON: We hold a license, that right is a right to operate.

THE CHAIRMAN: Oh no, it is a right to operate under certain rules.

MR. HENDERSON: Well, as a right to operate, all you are saying is, it is conditional but it is a right to operate, we have that right to operate.

THE CHAIRMAN: But you have not got a wide open right.

MR. HENDERSON: I do not suggest that we do but we have a right to operate with such limitations as exist now, the scope of that right has to be ascertained by someone. You and I just now have agreed that the scope of it, there may be limitations to that scope, the extent of those limitations must be determined by someone. Now, if the scope is large it impinges on the operational functions of the CBC to that extent it narrows or circumscribes their operation. It is in their interest to see that it is not circumscribed.

MR. COYNE: Why if it is in the public interest?

MR. HENDERSON: Because I am not satisfied

that the CBC interest and the public interest are synonymous and that is our brief. We say that the CBC insofar as it is empire building, may not be acting in the public interest.

MR. COYNE: Is that not your point?

THE CHAIRMAN: Can we not get away from the phrases like "empire building" and one thing and another.

MR. HENDERSON: I am not saying that nefariously.

MR. COYNE: Perhaps this might put it in summary form, where you use this term "interested" you really mean that the individuals in the operational end of the CBC have a personal interest in increasing the importance of their own jobs?

MR. HENDERSON: That is one aspect of it.

MR. COYNE: Is there another aspect?

MR. HENDERSON: Let me come down to a specific; at the present moment I understand that the effect of television has been that the national advertiser is advertising more on television than he is on radio network. Now, the CBC is in a position to say, "How do we protect our network advertising?" What it then can do is pass regulations which will make it more difficult for the individual broadcaster to obtain local advertising and throw some of that local advertising into the network. So far as it can make regulations it will have an adverse affect on the competitiveness of a local private station

and in doing that it is enabling it to compete more favourably and making it more difficult for the private station to compete.

MR. COYNE: But surely part of its interest, in the example that you give, part of the public interest which it is supposed to interpret is to make sure that the private radio stations are not forced out of business by this circumstance.

MR. HENDERSON: That is right, that should be a consideration but we feel if an independent organization was making the decision the interest of the private station would be given greater consideration.

MR. COYNE: It is not the interest of the private station I am speaking of, it is the public interest in having the private station continue to operate. I do not think there is any public interest in whether or not station A makes money or not.

MR. HENDERSON: No, but in making its decision it has in mind its own operating efficiency and can have little regard for the operating efficiency of the competitor.

THE CHAIRMAN: Does it not have to have regard to the operating efficiency and has it not, in fact, had regard for it?

MR. HENDERSON: Well, we are not satisfied it has, we are not satisfied that all the regulations that have been passed that work in the way I suggested --

THE CHAIRMAN: How have they hurt you? Have they impaired your earning capacity, have they lowered your profit?

MR. HENDERSON: Yes, some of them have had the effect of reducing our earning capacity or making it more difficult for local advertising to be obtained.

THE CHAIRMAN: Do you think your present earning capacity is lower than it should be?

MR. HENDERSON: I do not know what it should be.

THE CHAIRMAN: Do you know it is?

MR. HENDERSON: No, I do not know what it is, I do not have those figures.

THE CHAIRMAN: Well, we do.

MR. HENDERSON: I know you do, but let me say this, that the CBC has an interest in maintaining its own commercial revenue at a certain level and in making that determination it impinges on our ability to earn. Now, where the point of balance is is in the hands of the fellow who is going to get the money and not in the hands of an independent body. In other words, there is a point of balance somewhere.

THE CHAIRMAN: You talk about the conflict of interest and duty?

MR. HENDERSON: That is right.

THE CHAIRMAN: Now, I do not suppose the Crown or any other corporation can have in the way you are talking about have an interest

or a duty, it comes down to individuals who have an interest in duty where this clash takes place in their minds?

MR. HENDERSON: That is right.

THE CHAIRMAN: Now, what individuals do you suggest have this clash facing them?

MR. HENDERSON: I say it is in high places in the operational sphere to bring their influence to bear on the Board of Governors, the Board being constituted as it is, as a non-technical board with very diverse subjects and it has undue, and I use the word undue in the sense of the weight of the information that is brought to bear on it, they are not in a position to assess what is told to them properly because they are not qualified to and, moreover, they do not have the other point of view brought to their attention with sufficient clarity and forcefulness to make a decision as to where the point of balance should be.

THE CHAIRMAN: I want to know who these people are who have the mental clash between interest and duty, is it the Board of Governors?

MR. HENDERSON: Fundamentally it is the Board of Governors because the Board of Governors is the CBC in two spheres.

THE CHAIRMAN: What is the duty of the Board of Governors?

MR. HENDERSON: To see the CBC runs

as efficient service as possible at minimum cost.

THE CHAIRMAN: What is its duty?

MR. HENDERSON: Its duty insofar as its regulating private broadcasters is to impartially administer the law and the regulations applicable to them and make decisions on an impartial basis and it is that impartiality that is impossible in that atmosphere because it will tend, when a decision has to be made in favour of its own operating personnel, for several reasons, because it has a greater interest in the efficiency of that arm of its activities and also because of the fact that that operating arm has greater weight in the presentations made to them.

THE CHAIRMAN: Well, if it will tend to do so then later on there will be some examples to give us how that worked out.

MR. HENDERSON: Well in our brief we have given you some examples of how that can be done but may I say this again, in making this decision they do not write out who are doing this because it will help the CBC; we can only look at the results, we cannot look at their motives, they may believe they are doing this quite impartially but they cannot divest themselves of the inherent disability of the structure.

MR. COYNE: Then I would just like to go on to, perhaps, some individual points in your brief. On page 6, the last sentence of the section dealing with competition for business. You say:

"Another illustration of such competition is the fact that the Corporation's CBAF in Moncton, New Brunswick, actively solicits advertising in that city."

I believe I am right in thinking that CBAF is a French station and that there is no other French station broadcasting in that vicinity, or signals can be received in that vicinity, and in what respect does that indicate competition?

MR. HENDERSON: In point of fact it does for spot announcements.

MR. COYNE: In French?

MR. HENDERSON: In French, and in an area that is bilingual, and, nevertheless, the advertiser there has so much to spend and so much goes to the CBC station and so much to the private station, but the dollar allocation must be divided between the two.

MR. COYNE: In other words, if there was no French-speaking station in Moncton all the advertising revenue would go to the English-speaking station?

MR. HENDERSON: Such advertising as is done would then go to the English-speaking station. I am also advised a similar situation exists in Chicoutimi.

THE CHAIRMAN: Are you reading from page 6?

MR. COYNE: Yes.

THE CHAIRMAN: Just at the bottom of page 6, so we don't have to come back to it later, when you are dealing with competition from personnel:

"The Corporation and private stations employ the same type of people -- operators, announcers, and other types of transmitter, studio, and office help. There is obviously competition for such personnel. The Corporation's de facto network control means that such personnel after a certain point can increase their experience, financial incentives and sphere of opportunity only by entering the employ of the Corporation. Much of the Corporation's present personnel has thus been drawn from the ranks of private industry."

We did think, as some of you may know, some evidence had been received from some of the labour union representatives two weeks ago here in Ottawa, at which time they had some fairly critical things to say about wage scales in private stations and as to the attitude of the private station toward labour and as to the general relationship between employer and employee. I don't want to press you on it at all, but I am merely drawing it to your attention that this evidence has been given to us and if you have an answer to make to it I want you to have every opportunity of making it.

MR. ESTEY: We have labour troubles the same as everybody else has labour troubles, and that is as much as I can say on the subject. We have contracts with the unions. No doubt the unions would like contracts with all of the stations, but that is another problem and another process.

THE CHAIRMAN: It was not a question of unionization or not, it was in the brief of one of the stations and it was in the brief of the National Broadcasting Association of Employees.

MR. HENDERSON: I have had some negotiations with NABET, and I have had agreements with them on a question of fact and of principle.

THE CHAIRMAN: We are, apparently, dealing with a disagreement of fact here and if you have the facts on the other side you may say it is not what they say. They say a comparison of these figures proves that the Association and some of its members have made it a deliberate policy to pay substandard wages far below the national average in manufacture.

MR. HENDERSON: They have given no specific instances, Mr. Chairman, that can be checked.

THE CHAIRMAN: I don't think so, that is the way it was left.

MR. HENDERSON: In the absence of some specific situation that can be checked it is a generalization and I am not prepared to answer because I don't know.

MR. COYNE: I think there is only a reference to some document put out by the Canadian

Association of Television Artists.

"Transmitter Attendant:

Low -- \$67 per month

High - \$137 per month

Transmitter Operator and Studio

Operator:

Low -- \$67 per month

Median -- \$137 per month

High -- \$200 per month

Announcer and Announcer-

Operator:

Low -- \$137 per month

Median -- \$200 per month

High -- \$265 per month"

Now, I don't care whether you deal with this at all or not, Mr. Henderson; I am merely pointing it out to you in fairness that we have had this evidence that you are paying what has been described as sub-standard wages, and if, in fact, the attitude of the broadcaster is they are not paying substandard wages we want to, at least, put you in the position where we have this evidence.

MR. HENDERSON: May I ask, wasn't there also some evidence given by CKAC as to wages paid in that company?

THE CHAIRMAN: Who is that company?

MR. HENDERSON: Montreal. The union in that city stated that the rate of pay in that company was greater rather than less.

THE CHAIRMAN: I think this is the same group.

MR. COYNE: There are some specific instructions.

MR. HENDERSON: My instructions are it was a telegram.

THE CHAIRMAN: In one of these briefs they specifically excepted CKAC, I think. No, it was CKVL that was excepted.

MR. COYNE: Just on this point, Mr. Chairman, I think NABET and other unions, when making those statements you have quoted, were not suggesting it was a universal application of all private broadcasters.

MR. de GRANDPRE: As a matter of fact, the representative of the union who was present when the station presented its brief stated then that the scale paid by CKAC was union scale, or approximately union scale or slightly above.

THE CHAIRMAN: We have also had evidence from private individual stations that they pay the same rates or even higher rates than CBC. I just want to give you an opportunity to answer.

MR. HENDERSON: We consider over the country the wage scale we do pay is in keeping with the general level. I believe, in that information you have received from the union, and I only say this for the purpose of assessing the scales that are there, that talent fees may not be included.

MR. ALLARD: They were not included. The surveys you have before you were basic economic scales.

THE CHAIRMAN: You mean --

MR. ALLARD: What you are talking about, at the time that was taken we asked that talent fees,

bonuses and commission be deliberately excluded. I should point out it is now the general custom in the business to pay talent fees to a certain form of employee. And I should also point out that survey was taken a few years ago and is no longer representative.

THE CHAIRMAN: July 1953.

MR. ALLARD: Yes.

THE CHAIRMAN: They also say, and it is only fair to mention it, that CBC rates are considerably higher than the private station rates which have been cited. Nevertheless, even CBC technicians work at rates which are almost exactly 50 per cent of the rates paid to their counterparts at NBC and CBS. In no other industry is there such a wide differential between the United States rates and the Canadian rates. And NABET has obtained two wage increases from the CBC, in 1953 and in 1955, but only after long months of patient and difficult negotiation. What they are in effect saying is that the CBC rates are not unduly high as compared to the United States scale of rates, and the general relationship between the United States rates and the Canadian going rates and CBC rates are, in fact, higher than private stations, and I would judge from the way you talk about the financial incentive you are rather inclined to agree with them, because, obviously, if there is a financial incentive to move to CBC then their rates must be higher than your rates.

MR. HENDERSON: It is a different job opportunity.

MR. ESTEY: It seems to me this is a realistic illustration of what we have said about the Canadian industry. If they want to compare us with NBC they should give us NBC opportunity to grow.

THE CHAIRMAN: Are you suggesting you can afford to pay a higher rate?

MR. HENDERSON: I am suggesting labour in this market is no different than labour in any other market. If this industry is not the product of normal economic growth, then labour will not be as developed as in controlled industry. If labour wants to go along with us, well let them get on the band waggon and let private industry roll. On the one side they praise us and on the other they vilify us.

THE CHAIRMAN: I want you to understand me, and I do not want to put you in the position of answering an embarrassing question, but I want you to have an opportunity of answering a point that was made to us.

MR. HENDERSON: We appreciate the position of the Commission in that respect and we appreciate the opportunity of having our say before the matter is closed.

THE CHAIRMAN: That was the purpose of the cross-questioning.

MR. COYNE: Turning, if we may, to your section on examples of bias, which starts on page 11, at the top of page 12 you give certain instances, and the first one is an instance of programme take-over cited in Montreal by the President of the Canadian Association of Consumers. I must confess I don't recollect the particular instance.

THE CHAIRMAN: I think I can recollect it; I think Mrs. Vautelet, who gave that evidence, said that this was a matter on which she was so vague she did not feel it was proper for her to mention it, and if this can be made any more precise by you as an example of bias I would like to have it so made.

MR. HENDERSON: The facts, as I understand them, are that there was a programme on a private station in the City of Montreal which was being imported from the United States. Then, that programme came under the sponsorship of two United States companies. When that took place the regulations of the CBC applied and it could no longer be taken by the Canadian private station. So, it went off the air. There was a great deal of public uproar -- maybe that is ^otop high a word -- criticism, or demand; in any event, public opinion came to bear on the fact that the programme was denied the Canadian public, and the result was that it came back on the air, but CBC.

THE CHAIRMAN: Now, let us see. That is a situation where certain rules apply, and the imported programme was coming in under those rules. A change was made in the United States which didn't ^{fit} fit

the rules.

MR. HENDERSON: That is right.

THE CHAIRMAN: And, therefore, if the rules were to be carried out, the programme could not be brought in. Then there is apparently a public desire and demand in Canada for the programme, and the CBC made direct arrangements for it and put it on one of their networks. Where is that bias?

MR. HENDERSON: Well, bias is the state of mind of the party who made the decision to bring it back into this country.

MR. COYNE: But not in the same conditions. It was being heard in Montreal in the first instance, and was then put on the network and therefore broadcast across the country.

MR. HENDERSON: That may be. I don't know that part of it. As I understood it, the programme was a Montreal programme on the air through a private station, but the private station was deprived of continuing to have that programme on the air. Now, the bias can only be ascertained by the result, because the decision was that the public should get it through the CBC.

MR. COYNE: But a different public, surely? It was a network programme and it was going to the general public of Canada, which the Montreal station was not in a position to serve.

MR. HENDERSON: If that is the fact, I don't know it. I didn't know that is what occurred.

MR. COYNE: Well, I will ask you: what was the fact?

MR. HENDERSON: My recollection of the transcript of what Madame Vautelet had said was that it was on a CBC station in Montreal. Whether it went to Montreal through network or not, I don't think her evidence went that far.

MR. COYNE: I am not asking about her evidence. I thought you knew the facts of the situation.

MR. HENDERSON: No, we have referred to her evidence as an example ---

THE CHAIRMAN: No, you are putting it forward as an example of bias. By what stretch of language can you say it was biased, to follow the established rules? Wouldn't it have been, on the contrary, an example of bias if they had broken the rule?

MR. HENDERSON: Well, perhaps the rule could have been looked at and checked to see if it was serving any public purpose, but rather than have the rule amended the result was that the CBC imported the programme, and not the private station.

MR. COYNE: Mr. Chairman, we could generalize this a bit because we have heard of several instances across the country where a private station has been putting on a programme -- I believe several instances -- and where the CBC has decided it is a good programme for the people of Canada as a whole to hear, and have taken it and put it on their network. In some instances that meant that even in the town where it originated it switched from one station to another because the other

station was affiliated to the network.

MR. HENDERSON: Or conceivably went off the air. If there is no network station there, it would be off the air.

MR. COYNE: How does that indicate bias? If it is in the national interest ---

MR. HENDERSON: It may be it was in the national interest, but it certainly was in the CBC's interest because the CBC ended up with it, and I don't know whether in the national interest the CBC came to the conclusion that their interest was in the national interest, but it wasn't in ours.

THE CHAIRMAN: Of course it may not have been in yours.

MR. COYNE: That is obvious.

MR. HENDERSON: Well, we have no confidence that our point of view was independently considered. We can only look at the result, and the result was we lost ---

MR. COYNE: You lost business, and why is that any concern of the general public?

MR. HENDERSON: --- and the CBC got it. The CBC considered its own interest and the public interest were identical. That may have been a coincidence, or it may have been a reasoned-out decision. My own view is that the CBC considered its own interest, and that the public interest perhaps went by default.

MR. COYNE: You are saying the public interest may have been served by having that programme remain on a local basis?

MR. HENDERSON: Let me put this: there was no suggestion that the Montreal station was not performing its function properly. There was no suggestion it was doing anything wrong, but the result was it lost the programme to CBC, by a CBC decision. All I want is the opportunity to present my case to somebody who is going to listen to it independently, and in that situation I didn't have it. That is why I say "bias".

MR. COYNE: That is what you mean by "bias"?

MR. HENDERSON: That is an example.

THE CHAIRMAN: Does this all spring from your notion of conflict of interests and duty?

MR. HENDERSON: That is right.

THE CHAIRMAN: "Bias" in the dictionary, is "A mental bent, inclination, or tendency, a prejudice or predilection." Now, what prejudice is there?

MR. HENDERSON: Well, the result was prejudice.

THE CHAIRMAN: To you, yes, but that is not a prejudiced mind, and that is what bias means.

MR. HENDERSON: Mr. Chairman, I am in the impossible situation of not having been sitting in the CBC Board when the decision was made.

THE CHAIRMAN: And you would not be sitting in with the independent regulatory board.

MR. HENDERSON: Bias is a state of mind. All I can do is to show results. I suggest to you that the results indicate that when the

decision was made I am the one who is affected.
That can be a reflection of bias.

THE CHAIRMAN: You may be, and another one of your members who got the programme may be affected in a way which is not prejudicial at all, but which may be a very good thing for him.

MR. HENDERSON: Let me say this: I am not suggesting that if there had been a public hearing any different result would have taken place, but the situation was such that I didn't get an opportunity to be heard, and I lost the business. I had no say. They got it. I say that situation does not give the private broadcasters confidence in the system.

THE CHAIRMAN: But "confidence in the system": they went into the business with those terms written into the law.

MR. HENDERSON: Well, I was born to this world, but I hope I can change it. Surely the same situation results.

THE CHAIRMAN: You may have been born in a world quite different from a private broadcaster taking a licence under the conditions.

MR. HENDERSON: A naturalized citizen is subject to the laws at the time he becomes naturalized, and surely he can make a better deal for himself by having the laws changed. Surely, just because we accepted a situation ---

THE CHAIRMAN: I quite agree with you that you are on perfectly sound ground to say, "I don't like this and I would like to see it

changed because I can do better. I would like to see it changed because I want different opportunities. I don't want these restrictions."

MR. HENDERSON: That is right.

THE CHAIRMAN: But to say you want it done because they are biased and that they allow that to enter into the system, I fail to see it.

MR. HENDERSON: Mr. Chairman, we do not agree on the definition of "bias". Bias is the possibility of bias, not the fact of bias. The situation has within it the danger of bias. That is bias in the legal sense, and that is the sense in which we use it.

THE CHAIRMAN: I must say I get lost when you say that bias is not bias but the possibility of bias.

MR. HENDERSON: It is the situation which gives rise to bias, because they either have to incline one way or the other by the inherent nature of the situation. They will either have to say, "People will consider we are doing an improper thing" and incline towards us -- and that is not in the public interest -- or come to a conclusion against us, and that is not in the public interest. By the very nature of the situation we say they have to veer one way or the other. Let me go no further than this, that an independent board in the situation which I suggest, I can't see where that ^{would} would do any harm. It has not been shown to us how an independent board, in that situation which we suggest, would have adversely affected the public

interest. In other words, what we seek to obtain is not going to operate, as we see it, to the public detriment.

THE CHAIRMAN: That is another question, and we are only dealing with one part of your brief at a time. What you have said, first of all, as I understand it, is that here is a situation which had inherently in it, as I think you put it, "a built-in bias"?

MR. HENDERSON: That is correct.

THE CHAIRMAN: And then you undertake in your brief to go on and give some specific examples, though you say you don't need to, but you say that you are going to put some specific examples of bias -- not the possibility of it.

MR. HENDERSON: Except that "bias" in the legal sense is the possibility of bias.

THE CHAIRMAN: And we have this first illustration, and I think we have said enough about that.

MR. ESTEY: I wonder if we could say something more about the Montreal one because we were giving practical examples, and I want to be sure the practical effect is there. All we can do is ask the Commission to surmise what was in the minds of CBC at the time. Let us take a realistic example: CBM is the English-language outlet of the Corporation in Montreal, and let us say CFCF is the station we are talking about: those two managers are in competition -- and we have Mr. Frigon's words in connection with that -- and these two managers are

responsible to management, and management is always interested in the audience rating of the station. If CBM is low and can gain by taking off the big programmes on the other station, and if they have the regulatory power to do it, isn't that a strain on human nature?

THE CHAIRMAN: Well, we are dealing here with one instance, and that is not what happened. In this one instance you said quite clearly this was a programme carried; the CBC was not interfering with it at all; something happened to that programme which made it break the rules; it dropped from the air; the public wanted it; the CBC took steps to put it on.

MR. ESTEY: Why wouldn't they put it back on the station that had it before?

THE CHAIRMAN: Because it didn't have a network.

MR. ESTEY: Well, under Section 8 they could have admitted them to the network.

THE CHAIRMAN: They could have.

MR. ESTEY: Isn't that really what we are complaining of? Just because we have a good programme, CBC are not going to be prevented from sending it coast to coast, but why should they take it away from a local station?

MR. HENDERSON: May I say, Mr. Chairman, it is true each of these individual points of bias can be discussed from the point of view of its effect. When you have a great many of them they should be considered in their overall totality.

THE CHAIRMAN: I agree with that, and I think you have done a very careful job and are anxious to put as good a case as you can, and I presume you have put all the examples of bias you could find. If you have got any more I would like to have them.

Let us go on to the next one.

MR. COYNE: I think most of these instances which follow are similar in the sense that similar principles are involved. I was proposing to go on ---

THE CHAIRMAN: I think (c) and (d) are, but what about this extraordinary (b):

"The Corporation's insistence, cited in Montreal by CJON-TV that the station carry a programme directed to farmers after the station had pointed out there were less than 100 farmers in its area but many fishermen, and the inability of the station to secure Corporation programming directed to these."

I can thoroughly understand the CJON manager saying, "I think this was a stupid ~~dismissal~~".

MR. HENDERSON: That is right.

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THE CHAIRMAN: I think this was a decision where there were a great many programmes for the farmers involved. But I cannot see how this is an example of bias.

MR. HENDERSON: Well, this was intended to show that we are obliged to comply with dictation through regulation.

THE CHAIRMAN: Well, you told me yesterday that you were quite prepared to have the regulations continue and you will be prepared to comply with dictation under regulation, provided it is done by somebody else.

MR. HENDERSON: Again I come back to the opportunity to be heard. And I say I have no effective opportunity to be heard. I have to comply. The situation is such that the direction constitutes new law imposed upon me from time to time.

THE CHAIRMAN: Well, I think that -- C, D, E and F are all analagous to the one in Montreal which we have heard about, are they not Mr. Coyne?

MR. COYNE: In a general sense I think so Mr. Chairman.

THE CHAIRMAN: That is to say, programme carrying by reason of changes in some network arrangements, but what about this now: "the refusal of permission to carry addresses of the Minister of Finance by the Prime Minister unless line charges were billed and subsidiary network competitive situation cited in Edmonton by CFAC."

Now, how is that a refusal to carry out or to do something -- how is that an example of your point?

MR. HENDERSON: These were inserted as decisions which we suggest perhaps were not in the public interest.

THE CHAIRMAN: Oh no no, you are not saying that, you are not saying they are not in the public interest, you are putting them in as facts.

MR. HENDERSON: (off the record)

THE CHAIRMAN: You don't what?

MR. HENDERSON: I am sorry, I beg your pardon, we were having a little -- --

THE CHAIRMAN: A little conference?

MR. HENDERSON: Conference on these matters, just a moment please.

THE CHAIRMAN: Mr. Henderson, we are having a little conference up here, too. Mr. Stewart has pointed out to me the kind of language which you have used in your brief, in paragraph 3 on page 11 you say "the abuse of power would suggest a new Board of Governors rather than a different regulatory system." Now this is not a question of saying that this may not have been a good decision or one that was not in the public interest. You say "the extent to which present powers are used properly or otherwise could best be assessed by detailed analysis of the files of the station regulations division.

We suggest, however, that the question of whether the present powers of the corporation has been in practice indicated bias or abuse is beside the point. The abuse of power would suggest a new board of governors rather than a different regulatory system."

MR. HENDERSON: Yes.

THE CHAIRMAN: And you are talking about benevolence, even generosity, in a tyranny is no argument in favour of the principle of tyranny. You used the phrase: "abuse of power."

MR. HENDERSON: That's right. I am sorry not abusive, it should be abuse of.

THE CHAIRMAN: No, it is abusive power in my copy.

MR. HENDERSON: Yes, it should be abuse of, I think in some it is abusive.

I think perhaps we have made our point clear on C and D as to examples where results were, as we suggest, that the CBC took over the private station which was, as we might say, left high and dry. Mr. Chandler's example is CHCH in Hamilton, and it is referred to in his brief, I believe on page 10 of volume 5 of the material he has filed where he deals in detail with the effect of the directional antenna in Hamilton. The result, as I understand it, is that Toronto is unable to see Hamilton. Now that is the effect. It protects the CBC in the City of Toronto from competition from a private station in Hamilton. That is the result. We

know of no real reason why the people in Toronto should be deprived of the opportunity of seeing Hamilton. They can see the two stations in the United States. We don't know how the public interest is served, but we do say that the CBC interest is served.

THE CHAIRMAN: Well, is that any more than a logical carrying out of the single channel policy?

MR. HENDERSON: Well, it is the carrying on of the single channel policy, but the effect of it is that the public is deprived of seeing a private station.

THE CHAIRMAN: If you have a single channel policy, the public is also deprived of seeing the second station.

MR. HENDERSON: Oh yes, of course, and we come to that. But it is an example of where a decision has been in favour of the CBC and has impinged upon the activities of the private operator.

THE CHAIRMAN: I think it is an example of the CBC having carried out the instructions which they got from the Government on the single channel policy.

MR. HENDERSON: Well, yes, but we then have to ask the question how is that policy formulated. Did the CBC have any influence on that policy in formulating it or not. We don't know, but I would suggest to you that it did.

THE CHAIRMAN: I would think that if

it did not then it would not have been doing its job.

MR. HENDERSON: Well then, in that case the CBC formulated a policy which operates to the benefit of the CBC. That is the result.

THE CHAIRMAN: Well then, Mr. Coyne, are you going on?

MR. COYNE: I would like to go on to paragraph 5, Mr. Chairman:

"In 1947 Channel 860 now occupied by the Corporation's CBL in Toronto was arbitrarily withdrawn from Radio Broadcasting Station CFRB in that city, which had occupied it then for some fifteen years."

My question really refers to the use of the word "arbitrarily".

MR. HENDERSON: Yes. I think in reading it -- -- Oh I am sorry -- --

MR. COYNE: Well, I was just going to put forward my question that the policy for clear channels to be reserved to the CBC I believe was established as early as 1936, if not earlier?

MR. HENDERSON: Oh yes, well I would be interested to know where that was formulated.

THE CHAIRMAN: You state on page 17 of your brief that "from 1932 onwards the state broadcasting agency took over the use of all the clear channels allocated to Canada."

MR. HENDERSON: That's right.

THE CHAIRMAN: So I am prepared to accept your statement.

MR. HENDERSON: Yes, my understanding is that the Chairman, or the then chairman of the CBC in 1938 said there would be no interference, that no interference was contemplated in respect of channel CFRB.

THE CHAIRMAN: Mr. Henderson, the story we have is that somewhere in 1937 the clear channel policy was adopted as a notion, and at the end of negotiations in 1937 the clear channels were defined including 860 in Toronto and 1010 in Alberta. One of the conditions of the agreement was that the clear channel would be lost if it was not used within one year after the agreement had come out and full power used within the period of the agreement. The agreement became operative on the 29th of March 1941 when Canada was at war and with the exception of the CBC it was not possible to protect Canadian rights under the agreement. It was arranged with the CFRB in Toronto to keep 860 and with CFCN in Calgary to keep 1010.

During 1941, the Department of Transport put in licenses for these stations by endorsement to the act that regulation 15 of the Radio Act should apply to the assignment of frequencies. In april 1945 the licenses were further endorsed but the frequencies were definitely reserved for the National Broadcasting System and the stations were authorized to use them provisionally only. A year later in March 1946 the stations were advised they would be required to move to other frequencies and CFRB was permitted a power of 15,000 watts. Now how can you describe that either as

arbitrary or as an example of bias?

MR. HENDERSON: My understanding of the situation is that the decision was made without prior notification. That is why it was used as an example. We also have a witness who is here and who might be able to give the facts as we understand them and the basis upon which we wrote this particular paragraph. So perhaps in this respect we should call Mr. Love who is familiar with our point of view and with exactly what happened.

THE CHAIRMAN: By all means do, if this is reliable as an example of bias. These are the facts that I got from the Department of Transport.

MR. HENDERSON: Yes, well we put this in on the basis of our understanding of the situation that the decision was made before notification, no reason was given to the licensee about why it was being taken and there was nothing intimated that the licensee was not doing a proper job. It was taken because the CBC required it.

✓ MR. ESTEY: Mr. Love was and is the owner of Station CFCN which was one of the stations involved and I don't think we can do any better than have him state whether that was his opinion.

THE CHAIRMAN: By all means, yes Mr. Love.

MR. HENDERSON: What took place at that time. What was the first notification that you

received that CFCN was going to be moved?

MR. LOVE: I haven't gone into that since the Parliamentary enquiry that went into it. It was very definitely brought out at that time when we were originally allocated the licenses that as a result of the Havana meeting there was no restriction whatsoever on it. Later it was confirmed by the North American regional meeting in Washington. There were no restrictions. We got letters and we presented them to the Parliamentary Committee. It was some time after that the restrictions were added. We had had the license for a considerable length of time and there were no restrictions on it.

I may add that when I heard that something was going to happen -- that they were going to steal our license, and I use that word advisedly, I went to the department and Mr. Rush was in charge and he said: "You have nothing to worry about. You have nothing to worry about. Your grandchildren will have that license."

MR. COYNE: On that frequency.

MR. LOVE: On that frequency.

MR. ESTEY: Did you have any complaints about power at that time?

MR. LOVE: We were quite prepared to go to the maximum.

MR. ESTEY: Which was what?

MR. LOVE: 50 Kilowatts, and at that meeting I had all the farm organizations of any

consequence in Alberta who were behind me and who supported my evidence.

THE CHAIRMAN: But it is true that this regulation has been in existence from the very beginning which is to the effect that, under the Radio Act, the assignment of frequency does not infer any monopoly or any right or privilege therefor.

MR. LOVE: I think that applies to licenses all over the British Empire.

THE CHAIRMAN: I think you are right, and you knew this at the time.

MR. LOVE: Yes, but it is never taken away -- only for cause.

MR. ESTEY: Is there any suggestion that you misused your channel or frequency?

THE CHAIRMAN: Oh no one suggested that.

MR. LOVE: No.

MR. COYNE: Well, then, the reason for the use of the word "arbitrarily", if I understand you correctly, is that it is taken without sufficient notice of this policy of function given to the licensee?

MR. ESTEY: And to be assured he was not going to lose it by the Department of Transport, it was rather a remarkable result, the Department of Transport under the Radio Act issues all licenses and he was assured he was not going to lose it and then he lost it.

THE CHAIRMAN: Surely you are not suggesting that the Department of Transport could give any vested interest to anyone in the face of the regulation?

MR. ESTEY: No, that is right, they cannot change it around.

THE CHAIRMAN: Is there anything more Mr. Love wants to say?

MR. HENDERSON: From the information you have there may be questions arise that you might want to ask of Mr. Love. In other words, Mr. Love's understanding of the facts may be at variance with yours.

THE CHAIRMAN: Well, let me ask, since I have this, in 1941 according to the Department of Transport there was a provision made in the license of your station which referred to specific endorsements to this Regulation 15 on your license and again in April, 1945 I am advised that the licenses were further endorsed to the effect that the frequencies

were definitely reserved for the National Broadcasting System and the station was authorized to use them provisionally only. Do you recall anything like that?

MR. LOVE: Yes, I recall that, I have not refreshed myself on this but I know there was a period of years in which there was no notation whatsoever.

MR. COYNE: And that is a period of years subsequent to what date, Mr. Love, when you were first on 1010?

MR. LOVE: When it was allotted to Canada at Havana.

MR. COYNE: In 1941?

MR. ESTEY: 1937.

COMMISSIONER STEWART: 1937?

MR. COYNE: Well, the agreement did not become effective until 1941.

MR. HENDERSON: I find this in the Parliamentary Committee of 1938, Parliamentary Committee minutes of 1938, page 55; the Chairman of the committee asked:

"May I interject a remark here? The CBC is operating and functioning by reason of the parliamentary Act which was passed in 1936. I have a copy of the Act here. This Act gives the Broadcasting Corporation very wide powers."

The witness, who I understand was the then Chairman of the CBC said:

"Perhaps I could tell Mr. Johnstone this: there is no intention to interfere capriciously with existing wave lengths enjoyed by private stations unless it is imperative to re-allocate in accordance with international agreements or in the national interest. I have no information that any interference of that kind with CFCN is contemplated --"

That was in the record in 1938.

MR. COYNE: A change was made in 1947?

MR. HENDERSON: 1947 but I think you indicated the decision made in 1941.

MR. COYNE: But you are not suggesting that there is anything wrong in principle in reserving or taking clear channels for the public system?

MR. HENDERSON: All I say is, the decision was made and the effect was the CBC ended up with it, the private broadcaster lost it and the judge who made the decision was one who had an interest in the result and ended up with it.

MR. COYNE: Of course, the person who makes the ultimate decision was the Governor in Council?

MR. HENDERSON: Realistically the CBC

in our view brought its weight to bear on that decision. Again we have no confidence that our position was considered, the situation does not enable that to take place, therefore, it is difficult for us to accept the situation because our point of view, we feel is not completely heard. It comes back to the same thing at all times and that is that there is no independence on the part of the body that makes the ultimate decision. The result was we lost it and the CBC got it.

MR. COYNE: Let us be clear on what you mean when you say there is no independence on the part of the person who makes the ultimate decision. Surely the person who makes the ultimate decision is the Governor in Council on the recommendation of the Minister of Transport.

MR. HENDERSON: Well, who effectively makes the decision?

MR. COYNE: Well then, turning, if you will, to page 14 --

THE CHAIRMAN: Is that the end of that?

MR. COYNE: Well, paragraph 7 and 8 on page 13 were dealt with by Mr. Chandler this morning, the policy of reallocating the television channel allocations, that would probably come up more in the discussion on second television stations. On page 14 you recite at the top of the page Regulation 14 (1) and Regulation 14 (3) and then you have this sentence:

"In practice, the condition surrounding permission for networks have made operation of these impossible."

And what surprised me is the entirely unqualified nature of this statement because we have had a good deal of evidence that networks, private networks have in fact operated and in particular we had evidence, I think from a Montreal station not so long ago that they had in fact been operating a private network for something like 10 years. I do not remember the details but I believe it was on a regular basis of some hours per week.

THE CHAIRMAN: Yes, on a regular basis, station CHPL in Verdon and Mr. Thomson gave us very detailed evidence of the effective formation of a network of several stations and that, not only did he have the necessary permission for it but was actually given support and assistance in the early stages of the operation. I think Mr. Coyne's question is the condition surrounding the permission for networks have made operation of these impossible?

MR. HENDERSON: The reason for that statement is that we understand that for a network to be effective, long-term contracts must be entered into.

MR. COYNE: I would be interested in your definition of a network but the evidence of

this Montreal station was that this had been going on for ten years which is quite a long time.

MR. ESTEY: The Montreal transcript is not available and we are depending on newspapers, apparently the transcript is just not typed.

THE CHAIRMAN: This was Ottawa in case you are going to look it up.

MR. ESTEY: I am told it is not available yet. This is a regional network we are talking about.

MR. COYNE: Who is talking about it?

MR. ESTEY: Your question was about CHPL which is operating a regional network.

MR. COYNE: Your statement says networks.

MR. ESTEY: I am not backing off an inch from this statement, I am coming around to it. The second thing is that network was not a regular commercial venture with a regular commercial supply of programmes, a commercial network.

MR. COYNE: All right, you are defining --

MR. ESTEY: He would have to get permission unless he broke the regulations, now, if he broke the regulations and got away with it then that is worse.

MR. COYNE: You are making an unqualified definition of fact --

MR. ESTEY: It depends on what you mean by a network. The labour union was under no illusion as to what they meant, the CBC refers to networks,

the permanent network, that is what we mean. We are not inventing a word, we do not say you can have a sort of neighbourhood network when you can call the stations in --

THE CHAIRMAN: The evidence is that this is on every day of the week or five days a week and it has been going on for years.

MR. ESTEY: Perhaps we should not discuss it without seeing the transcript but was it a network which had pre-announced features and regular commercial programmes and if so, how do they comply with the regulations?

MR. COYNE: Perhaps it would not but you are establishing some qualification to the use of the word "network" and you are perfectly entitled to put these qualifications, it will be very helpful to us if you will but this statement is an unqualified statement of fact using what I think we would feel is a general term and it seems to be contrary to the evidence. I take it from what you say that you are not defining that this statement in its unqualified nature is contrary to the evidence but you are saying some particular kind of network has been impossible and if you could elaborate on what kind of networks are impossible it would be helpful.

MR. ESTEY: Surely it is clear permission had to be secured each network broadcast making it absolutely impossible to enter into essential contracts, now, if you have to get permission for

each individual network hook-up how can anyone lease a studio and sign a year's lease?

THE CHAIRMAN: Mr. Thomson told us that he made his contract --

MR. ESTEY: Was it out of his existing station or a network such as the CBC operates?

THE CHAIRMAN: It was a network with 12 or 14 stations, I am speaking there from memory and without the transcript as you are but certainly it was a number of stations and they have been operating on a regular day in and day out basis and they have been operating for years.

MR. ESTEY: I would like to see the permission he got under Regulation 14(1). It seems to me they have a bigger case now than ever. He has got permission there and the next thing you know you will have to have a mimeograph machine running out Thomson licenses.

MR. HENDERSON: Because he has --

THE CHAIRMAN: Mr. Dunton?

MR. DUNTON: There may be a little misunderstanding about this; permission is given not on an individual programme but only if applied for for a series of programmes in a week coming as they usually do at the same period each week, a period of 13 or 26 weeks. The permission may cover a whole series of regular programmes.

MR. ESTEY: In order to operate a network on this basis you would have to have assurances of

a series of broadcasts. If that is the policy then let us take the regulation and put it right out, because this regulation is wrong if it permits a man to do what Mr. Thomson has done. We have not heard another station come and say that they are part of the network.

MR. COYNE: Let me just put it this way, I do not know why you insist on this unqualified statement, but would you assume that some types of networks are possible?

MR. HENDERSON: Well, in this letter of August 1956, "There must be separate authorization for each programme or programme series". This is as of August 24, 1956. I do not know how it was done beforehand, we are flying blind because I do not know what Mr. Thomson was doing but whatever he was doing he had to do it within the scope of that limitation.

MR. COYNE: Surely it is certain that whatever Mr. Thomson was doing it was well known to other people in the business that he was operating in this way?

MR. ESTEY: I do not know how well known it was.

MR. COYNE: It must have been known by the listeners in Montreal, was it not? If not, by the station nearest who was in competition with him.

MR. ESTEY: Has there been any trade journal announcement of this network, that it was

operating?

THE CHAIRMAN: If you are going to be in business competition you find out what your competitor is doing.

MR. ESTEY: There is nothing to say that there was a network; were there contracts between Mr. Thomson and the other stations?

MR. COYNE: I am not suggesting that is in any sense equivalent or similar to any CBC network or any regular 16-hour a day network.

MR. ESTEY: We do not even know that was a network, maybe the station originated one but what happened to it, did it come over the 12 stations?

THE CHAIRMAN: Mr. Dupont is sitting behind you and I'll bet he knew all about it.

MR. DUPONT: I think perhaps you realize that I am more interested in the French market.

THE CHAIRMAN: If it had been in the English market you would have known about it?

MR. DUPONT: Yes.

MR. ESTEY: That is what we are surprised at, we feel we would know about it.

THE CHAIRMAN: Maybe the fault is in your clients not keeping up with things.

MR. HENDERSON: I think if necessary we can give some evidence as to how the network, this network broadcast does work. We have private broadcasters who can give evidence as to how it

has affected them in practice if that is the type of evidence you have in mind because we can assure you it has worked in fact in some cases.

THE CHAIRMAN: We did have some evidence about this in British Columbia, page 1832 of the evidence:

"Have you ever made application for a temporary license, a temporary network for a period of a week or two week or anything like that?

MR. FINNERTY: We have joined together some of the stations in the Okanagan Valley on occasions for specific sports events.

COMMISSIONER STEWART: And that has never been refused?

MR. FINNERTY: Never been refused, to my knowledge, no."

Then further down:

"COMMISSIONER STEWART: On these temporary applications, would you say the CBC have been reasonable in their decisions?

MR. FINNERTY: Most reasonable."

So they have some kind of network in another sense of the word.

MR. ESTEY: Oh yes, there are lots of those, private networks on permission basis but

what I would like to know is this; I read Regulation 14(1) which says you must have permission to form a network and then I read the letter which says each individual broadcast and now you tell me a network operates under that so isn't that a good idea to have the whole thing brought out in the open?

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Oh, yes, there are lots of examples in Ontario of private networks on a commission basis, but what I would like to know is this. I read Regulation 21 which says you must have permission to form a network and that it is rigidly controlled, and then you tell me about one broadcaster who operated a network and I am wondering how he got the necessary approval in advance for a big enough range of programmes for a regular network. That is what I would like to know, and if it is on the same basis to everybody?

COMMISSIONER STEWART: I think, if I recall it correctly, the day CARTB appeared before us, they mentioned something about a network operating somewhere around Kitchener.

MR. ESTEY: That is something that is participated in by several people. That is television. I doubt whether there would be a network there.

COMMISSIONER STEWART: Is that it? I think we got mixed up at that time between television and radio. We still do.

MR. COYNE: Mr. Estey, turn to page 15. In paragraph 14 you say:

"National private networks operating in Canada were dismantled after passage of the Broadcasting Act of 1932. Repeated efforts to secure permission for revival have failed."

Could you tell us something about the efforts that have been made to seek permission for revival, and,

again, I trust you will not find it necessary to repeat all the proceedings of the parliamentary committee.

MR. ESTEY: I have quite an index here. Perhaps I can just read them off. First of all, there is some reference in No. 32, networks; do you want that?

THE CHAIRMAN: No, I would be more interested in finding out what efforts were made to seek permission for their revival.

MR. ESTEY: Then, I refer you to -- this is all set out in the following references to parliamentary proceedings, starting with 1934, page 39, 1936 ---

THE CHAIRMAN: Let me just ask you this question. Are these efforts you speak of, have they been submissions to the CBC on a specific programme of network operation or have they been submissions to a parliamentary committee which were merely submissions to have the lines changed?

MR. ESTEY: The latter.

THE CHAIRMAN: In other words, what you are referring to are submissions to Parliament to prevent the CBC having control over the private stations?

MR. ESTEY: Illustrations of denials of network permission and the point you last raised. Yes, I don't have to change that answer except the third feature in the report, various organizations renewed their requests to be given permission.

THE CHAIRMAN: Renewed their requests

to whom? Have there been any applications to the CBC for permission to operate a national network?

MR. ESTEY: Yes, we discussed the thing here yesterday and the day before, the discussions in 1932 and 1934, which only resulted in the CBC coming up with a Dominion network. Then we have an example in 1947.

THE CHAIRMAN: They were discussions, but was there a specific application?

MR. ESTEY: Oh, yes, and the blueprint was drawn up as to how they were going to do it.

THE CHAIRMAN: And this was presented to the CBC?

MR. ESTEY: Yes, this was presented to the CBC and they took over the plans and formed the Dominion network. This was in 1947, and the stations involved in the Dominion network were riding from the west coast to the east coast and that was taken over by the CBC with the stations being moved over to the CBC station in those areas. Now, is that an example?

THE CHAIRMAN: Yes.

MR. ESTEY: Then in 1936, page 498, those last companies there gave evidence that the regulations for networks were impracticable.

THE CHAIRMAN: What do they mean by that?

MR. ESTEY: This is what I have been trying to get across this afternoon. You cannot operate in that atmosphere. A network is not just a connection of wires and stations, but it is an

organism. It is a big organism, and you cannot apply for letters patent in Canada today to operate a broadcasting company so long as Section 14 is in effect

I have a lot of these and I can give them to you without taking up the Commission's time.

THE CHAIRMAN: I think I am perfectly satisfied if the Commission is. In various parts of your brief you say you want permission to form a network?

MR. ESTEY: This is the difficulty, and let us be frank about it. This is an Association of radio broadcasters, not an embryonic organization. They hoped it would become a network for that organization. So what we say must be heard in that light. If permission were granted to form a network, I am advised a national network is feasible -- nationally, coast to coast. Perhaps I shouldn't use the word nationally.

THE CHAIRMAN: I recognize your difficulties in acting for an Association, as you do, but up to now -- supposing permission were granted tomorrow you could give me no assurance there would, in fact, be a national network.

MR. ESTEY: No, if I did it would be improper because I have no instructions and there is nobody here.

THE CHAIRMAN: I am not suggesting you should be able to but I want to know the facts. In other words, there is no existing group of stations who have put their heads together and decided they

would like to have a network?

MR. ESTEY: That is right, and they haven't done so since the last time they were refused.

THE CHAIRMAN: So that we have no concrete proposal of a network proposed or even any assurance there would be a network?

MR. ESTEY: That is very true, and we would be in a very awkward position if we had to go out and turn around and get someone to give us that assurance.

THE CHAIRMAN: I wanted to ask if there had been any such proposal to see what kind of a network it was going to be. First of all, as to whether you had looked into the cost, which is important.

MR. ESTEY: In 1944 that was all looked into.

THE CHAIRMAN: Secondly, what kind of programmes were you prepared to buy? What sort of Canadian content you would have? Would you set a fairly precise requirement as to, say, forty per cent of Canadian programming or fifty per cent, or whatever it should be? The point I am trying to get at, Mr. Estey, just to say it would be dandy to have a network isn't enough. I would like to know something about what kind of network you are talking about; what sort of performances you would give; what sort of Canadian content you would use, and, just judging from our studies of the United States evidence, whether you ought to have your head read for thinking about

a network because their whole evidence before the FFC has been to the effect that networks are exceedingly expensive and difficult things, and even with 165,000,000 people and all the wealth there is in the United States the existing networks are merely breaking even.

MR. ESTEY: I notice the most recently formed network is not suffering.

THE CHAIRMAN: Which one is that?

MR. ESTEY: ABC.

THE CHAIRMAN: It has a very special tie-up with the movie business.

MR. ESTEY: They better not have or they will be back -- they are associated only with one theatre -- Paramount Theatre. We are in the same position as the fellow who first invented the radio coming along and asking for a licence and being told you cannot have a licence, or, if I give you a licence will it work, and will you put on Canadian programmes and all those different things, and it costs money to make all these plans.

THE CHAIRMAN: Let us get at it another way. Supposing you are allowed to form a network, what do you regard as being reasonable conditions to impose upon that right?

MR. ESTEY: I am wondering whether or not a network as such has to be regulated or whether it would be easier to regulate the network, which, of course, would have to comply. If it is necessary to regulate network plans, regulate them.

THE CHAIRMAN: I would think if a network

wanted to go into this business and make money they would find it much better. Say a television network used old films and if they were a radio station used nothing but recorded music, that would be one method, and are those methods which should be permitted?

MR. HENDERSON: Shouldn't that be something for the board to which it makes the application to determine? For instance, the problem at the moment, as Mr. Estey says, it has been oppressed so long the blueprint isn't there, and what we are asking for is an opportunity to make an application to the independent board so that the conditions could be prescribed and the details set out as of public interest and as the Board determines. But at the time the atmosphere is such that one is interested in making an application.

THE CHAIRMAN: I know, but you are asking us to recommend that you should have network rights, and what I am really trying to get at is this -- of course it is hypothetical: you have network rights, I don't think we would be doing our job if we were to recommend this in the abstract. I think you have to spell out something as to what kind of network and what would be a reasonable type of network right to give.

MR. HENDERSON: I think, and this springs from the original comment which you made, Mr. Chairman, and that is, should there be Canadian talent in it, for instance. Well, there is always pressure on stations to increase to Canadian

programming.

THE CHAIRMAN: But it doesn't work very well.

MR. HENDERSON: Let us be realistic. If you write your cost to \$27 for a musician available for one station, if the union allows, and then you can syndicate it and can write it over the musician cost goes down to a few cents per station. If there is no pressure to put on live talent and it follows we can have syndication of live talent, your cost is away down. If we could syndicate we could form a network.

THE CHAIRMAN: I would say I would think that would be a very sound argument going to the amount of live talent you would use, and there would be the point you couldn't afford to engage live talent, but you are not suggesting you are anywhere close to that point now?

MR. HENDERSON: Oh, I think so. There is the field but we have not been able to move into it.

THE CHAIRMAN: I am not talking about that. You were saying because you haven't had networks you cannot afford to take on live talent. I am saying that might go to the amount of live talent you should use, but you are not suggesting you cannot afford to engage some live talent now, are you?

MR. HENDERSON: Oh, no, but with the network ---

THE CHAIRMAN: You would be able to do more?

MR. ESTEY: Yes. I mean take it hour for hour, if we are running in competition with the network it is very difficult. On this point I would like to document our 1944 instance by referring you to the 1944 proceedings at page 526.

Honourable Mr. LaFleche asked Dr. Frigon:

"Q. May I word my question more correctly? Was not the second network under the CBC in response to requests you had had from private radio broadcasting stations?

"A. Well, partly. We agree there was room for another network which was requested by private stations and by others, and no doubt their previous request gave weight to the decision. They were unquestionably for a new network."

Private enterprise in other fields has no doubt had rebuffs, but they have had more rebuffs on that than is probably average, with the result it has killed off the drive to form a network.

THE CHAIRMAN: Well, I am only asking you, if you are really wanting to make a drive, then as far as I am concerned you had better tell me what kind of network you propose to drive for? Let me put it the other way round: those who are proposing the idea of a network should stipulate the kind of performance -- or is this just a general statement that you would like to have a network?

MR. ESTEY: Well, it is somewhat like the submissions on tariffs: you don't have to show detailed operations of how to work on an article you have not got. We have not got a network in operation to decide what regulations are feasible, and I think it would be misleading if we, as station operators, were to sit here and tell you how to run a network.

THE CHAIRMAN: Well, I am not asking you to be misleading; I am simply saying that if we are going to make a recommendation on this subject I think you will have to do something more than simply say, "Give them the right to form a network."

MR. ESTEY: Why, sir, if that network is going to be under the guidance of the CBC or another board?

THE CHAIRMAN: Because we don't want you

to say at some other time, "We were let in here on a branch of business where there was a wide open lack of restraint . . ." -- as Mr. Love was saying about taking over the frequency in Calgary -- ". . . and later they come along and change it."

MR. ESTEY: But it didn't deter him then.

THE CHAIRMAN: But you have been complaining about that.

MR. HENDERSON: I am satisfied that if we had an independent board we would have the network. We would then make an application with a blueprint with the details, and the board could pass on that -- on its merits. Our request for a network is not altogether unrelated to our request for an independent board.

MR. COYNE: Mr. Henderson, this is a general question on the same point: how many networks, let us say in radio, does your Association think Canada can afford? I think it is so that the United States with 165,000,000 people and twenty times our gross national product, supports three national networks.

MR. HENDERSON: Four.

MR. COYNE: Four; and in TV they support -- someone said two and a half. I don't know what the half is.

MR. ESTEY: Well, three and a half is it, I think.

MR. COYNE: Three and a half?

MR. ESTEY: Three and a half.

MR. COYNE: And can one anticipate that in

Canada we can also in our situation afford four national radio networks and three television networks?

MR. ESTEY: No, but the Chairman raised the point which I would like to put together with yours in answering that. Certainly, if we were allowed in under false pretences we would be knocking on the door of Parliament.

THE CHAIRMAN: It is not exactly false pretences, but I think you would object to giving people wide open rights and then starting to cut them back.

MR. ESTEY: Are we not asking for something less than "wide open"? All we are asking is that the board have power to permit networks.

MR. HENDERSON: The result has been that the application has been made, but they end up with it and we don't.

THE CHAIRMAN: Twelve years ago.

MR. HENDERSON: Well, 1944, and that was the fact, and as a result no applications have resulted

THE CHAIRMAN: Think of the date you are talking about -- 1939, just before the war started, and 1945 when it was barely finished.

MR. HENDERSON: And no application has been made since.

MR. ESTEY: Oh, yes, I mentioned the 1947 one which was the crowning blow where a station in the west and one in the east had offered to carry a sustaining programme to the Dominion Network, and

instead of being allowed to continue to do so as they had done, in fact, those functions were transferred to the respective key stations of the CBC in those areas. Those things are not taken lightly. You are discouraged. Then you have a regulation which on the face of it underlines the policy ---

THE CHAIRMAN: Why do you get discouraged on some things and not on others? You have been talking about this independent regulatory board for twenty years.

MR. ESTEY: Well, we are not going back to the CBC for it. We are going to the basis of Parliament to get it.

MR. HENDERSON: I think you have said that we are asking for a network: that is not what we are asking for.

THE CHAIRMAN: I think you are asking for the right to form it.

MR. HENDERSON: We are asking for an independent regulatory body, and if one were formed we believe the network would be made. Our recommendations on page 2 define what we are asking for. They are our recommendations, and we say that if the first recommendation is implemented, one of the results that will flow, in our opinion, is that a network application will be made, but we are not asking this Board to recommend a network. The recommendations: "(a) the establishment of a separate administrative authority."

THE CHAIRMAN: I am almost certain that in your briefs filed last April you did ask in

specific terms for the right to form a network.

MR. HENDERSON: That is not what is in our recommendation as presently put forward, and we say the present regulations make network formation impractical. We say if there is an independent board, then we believe applications will be made. That is the position we have taken in these hearings.

MR. ESTEY: Mr. Coyne asked a question about the United States: it is partly answered in Supplement No. 17, section J; at page 3 it says:

"Actually the population of Canada is more concentrated than that of the United States. A larger percentage of people in relation to total can be reached here, therefore, at less cost."

MR. COYNE: I can understand you wanting to form a network serving purely the concentrated areas of population, but I was thinking in terms of a national network providing coverage for the whole nation.

MR. ESTEY: So am I. The coast to coast ribbon in Canada does not need to be extended north and south like in the United States where it is like a web; in Canada it is like a string of beads.

MR. COYNE: Do I take it you do not think it is any more costly in Canada to operate than in the United States -- I mean costly with regard to the revenue?

MR. ESTEY: Let me answer that this way:

I don't think there is anything indicated in Canada's economy today which makes the proposition of networks economically unfeasible. I am looking at a market survey on sales which also says that Canada despite its vast geographic size has a far more concentrated population than the United States, thus cuts the cost of sales and advertising; Sales Management, a magazine on marketing, May, 1956.

MR. COYNE: I have no further questions on this section.

MR. HENDERSON: In answer to a question you have put to us, I have the original brief here and I see nothing in the actual printed document which says we were asking for a network.

THE CHAIRMAN: Maybe what I am thinking of is that we did get into quite a discussion about networks. I have a note here somewhere referring to a request to form -- "We would like the right to form networks".

MR. LYND: Mr. Chairman, we got into a great many discussions at that first hearing, but if we got off the track at any time we were wrong, because we were just asking for two things: a separate regulatory board and competitive television.

THE CHAIRMAN: Well, this is the thing; I think I have found it; it is Exhibit 17 at page 2, and I think this is where I got it.

"In 1951 the report and recommendations of a second Royal Commission indicated that non-government broadcasting stations were to be permitted continued, officially acknowledged, existence. But the Commission visualized them merely as part of and adjuncts to the state system and without right to form networks amongst themselves should they desire."

That, in a sense, was a comment as to the Massey Commission's report, but I think I took from it that it looked as though you wanted to form networks.

MR. LYND: We didn't ask this Commission to recommend that.

THE CHAIRMAN: Thank you, I am clearer on that than I was then. I think we might go on, Mr. Henderson and Mr. Estey.

MR. HENDERSON: If we are proceeding to another subject matter, we do have a witness here who should be dealt with today if you particularly wish to ask him any questions, and we have him here because of the comment which was made yesterday, or perhaps the day before yesterday, that in our submission we have a survey which was a random sample of 110 people in the City of Hamilton. We thought that the person under whose jurisdiction that survey was made should be here and available

for questioning by the Commission, since it is a technical matter -- a public opinion survey -- and a matter on which you may wish to have some further information, particularly as to whether the sample is one from which you can generalize and make determinations.

THE CHAIRMAN: Well, if you have any evidence you want to lead on the subject -- I don't know that we are going to sit in judgment on the accuracy of surveys. The comments were made by Mr. Wismer on Exhibit No. 315.

MR. HENDERSON: That is right. You commented at that time on the survey made, and I would like to ask Mr. Saunders as to what generalization can be made from the sample which he took, and perhaps he would explain why the sample that was taken was in the number taken and why the area of Hamilton was taken, and the conclusions reached.

Mr. Saunders, would you first tell the Commission who you are, the company you represent and what you did in the matter of taking a public opinion poll.

MR. SAUNDERS: I appreciate the opportunity of clarifying these points, because pollsterers do not always get that opportunity of clarifying statements in connection with their work. I was asked to speak about two things: one was how there was any connection between the Gallup poll of Canada, so-called, or to use its correct name, the Canadian Institute of Public Opinion, of which I am a director -- I am a co-director -- and the Bruno

Marketing Research Institute, which conducted this
Hamilton study.

THE CHAIRMAN: I want to say this Mr. Saunders, we are not prying into your private affairs and this in fact is not part of our job to do. If you want to tell us, by all means do so, but you don't have to on our account.

MR. SAUNDERS : It is public knowledge sir and you are asking about the question of samples - you mentioned the use of samples particularly with respect to Hamilton. Now this won't take very long. The Canadian Institute of Public Opinion and the Gallup poll was formed in 1941 and, its revenue was derived entirely from the newspapers for whom the Institute prepares the reports on public attitude about matters of national issues and, I have directed that organization since it started in 1941.

In a very real sense, the Institute is a non-profit organization and would not be able to carry on over the years as it has carried on if it were not for the fact that early in 1942 we started using some techniques - exactly the same techniques that have been used in business and industry and in other groups that were interested in assessing a particular part of the universe of public opinion. That is a profit operation and that has enabled us to keep our organization together and to do the polls for the newspapers - the Gallup Poll and so on which has continued in that way. That situation continued until 1955 and then in 1955 I joined the Canadian Advertising Agency

as vice president and director of marketing research and media research. I could not carry that on and also carry on my marketing research operation for reasons that would be obvious to you.

Therefore there was a merger with Bruno - although I have no equity in Bruno in any way at all except that my staff was absorbed in the merger and my partner - who is also my sister - is vice president of Bruno, but I have no fiscal connection with Bruno Marketing Research at all.

Bruno Marketing Research does the field work for the Gallup Poll but the responsibility for the issues and the interpretation of the results lies with my sister and myself.

I wanted to get that quite clear. Now, on the samples, in effect then, Bruno Research as the parent institute is a client of Bruno Market Research - that is what it boils down to. With respect to samples, this work is based on a generally accepted sampling technique which is not far out from the blood-test or the idea of the housewife using a little teaspoon to taste the flavour of soup. The object of the sample is to get to the important component part of the universe while getting representation in proper proportion in your sample. The goal that we are moving towards, and we have made some strides in this respect, is to give every single person in the universe an absolutely equal chance of being interviewed so that that is what is called a random sample - that is the idea goal.

THE CHAIRMAN : That is a horrifying proposal you have just made --

MR. HENDERSON : Could you tell us why you chose Hamilton as the base of your survey.

MR. SAUNDERS : I want to get it clear and I have tried to explain - that I had no connection with Bruno and I wasn't aware that this study was even done until two days ago. I have studied the report and I have had access to the tabulations but I cannot be cross-examined on this subject because I just learned about the study a few days ago. Hamilton was studied as I understand it, because of the fact that Bruno Market Research interviewers had to get the members of labour unions and Hamilton is a good place to get a concentrated ratio of labour union members. Therefore the high cost of what we call door to door elimination where the interviewer rings door bells until he finds a member of a labour union was reduced. That was the reason Hamilton was chosen.

THE CHAIRMAN : I think the only question that was raised was as to the choice of Hamilton - - I see your point about the union members but, we are dealing with the listening habits to private stations as compared with the CBC and there is no CBC station in Hamilton, and it makes it a little difficult to know whether that is a true sample. That is the question.

MR. SAUNDERS : Yes, I think I am correct sir in saying that the main purpose of the research was to measure the attitudes of the labour union rank and file members and their knowledge of the CLC

brief.

MR. HENDERSON : That is correct.

MR. SAUNDERS : The other was a
collaboratory purpose.

THE CHAIRMAN : I see. But you
see it starts out by asking how long they
are on the radio - what their favourite programmes
are - how can you compare the CBC programmes
with the private stations, and so on---

MR. SAUNDERS : Yes. But I think
I am right in saying the the Hamilton people
can hear a CBC station.

THE CHAIRMAN : Yes, but somewhat
remotely. There is some question asked
about CBC programmes - whether or not a lot of
the programmes although from the CBC are in
fact carried on the private stations. However,
the listener does not distinguish between whether
it is a CBC programme or not - that is the kind of
question that is raised and I am not criticising
but I am saying that it has been put to us.

MR. SAUNDERS : This is accompanied
by the suggestion that the sample was too small?
Or something of that nature ---

THE CHAIRMAN : I think the suggestion
was that only 110 were taken.

MR. SAUNDERS : Well that is a
point I would like to cover if I can -- this
small sample, that is a continuing question that
we are always asked. The size of the sample
- the facts of mathematics are that it is no use
using or multiplying the size of your sample
- By multiplying the size of your sample you do

not ensure greater accuracy. All you do is to enlarge any bias - if I can use the word bias-- that is inherent in the sample

THE CHAIRMAN : Don't tell me you have got a built-in bias too?

MR. SAUNDERS : In applying these techniques to the business you have always got a budget to work with, and the function of research agencies is to decide how small a sample you can have and still get an accurate sample, because, I have some figures on this -- if the sample in Hamilton had been four times the size that it was, it would have been 450.

The margin of error in the sample is 6.4 percentage points - in other words, 12.7 would have been the new figure with reference to the CLC brief and the mathematical difference would have been perhaps 18 to 6. That is the way it works in 95 cases out of a 100.

However, usually it is much more close to the centre line though. But if you had taken 4 times that figure the error instead of being 6.4 per cent would, mathematically, have been 3 per cent. Now it is a matter of executive judgment whether it is worth spending 4 times the amount in order to get twice the accuracy. This is just a matter of what you want to do with the research.

We thought that a small sample such as 110 was an adequate sample within that range of error. It couldn't have been more than 16. I mean, if you had taken a 100 per cent census of the

community - and now I am speaking of any person using the proper techniques, we believe they would come up with somewhat the same results, on a 100 per cent census of the labour population. We think that this would give you something close to these results. It may have been in the neighbourhood of somewhere in the vicinity of 16 to 6.

MR. COYNE : I thought you said 18 to 6, -- it is 6.4 per cent --

MR. SAUNDERS : Oh, that is right - 18 to 6.

THE CHAIRMAN : But you see in your questioning you are dealing with the question of accuracy of the opinions of 1 million men in labour unions spread across the whole of Canada. Do you think it is an accurate sampling of that kind of group to go to one place and pick 110 people ?

MR. SAUNDERS : It is done sir all the time in marketing. You take a case history and, a representative town, and, you come to national conclusions on that. It is done all the time in marketing research.

THE CHAIRMAN : I can see that it may be perfectly valid as a way of governing the market in Hamilton, but we are wondering whether it is necessarily a test of marketing habits or consumer ideas in Quebec City, for instance.

MR. SAUNDERS : Well, if there was any reason for thinking that the union member in Hamilton was different in respect to knowing

about the CLC report, compared with the union member somewhere else, then I think your point is right.

MR. COYNE : Would it not depend to some extent for example on whether the local labour council of Hamilton had held a meeting of the members at which the CLC brief was discussed.

MR. SAUNDERS : Oh yes, yes.

MR. COYNE: If that was not done in Hamilton and if it was done in Winnipeg, to take an example, it would not be suggested that your Hamilton sample was a true sample, necessarily, of the opinions in Winnipeg. In other words, the situations differ.

MR. SAUNDERS : This is a case history. If some community with a labour component in the population had done a terrific job in popularizing this, then obviously Hamilton would not be right.

MR. COYNE : Well it would not even have to be a terrific job - would it ? It could just do the same job but differently from the job done in Winnipeg.

MR. SAUNDERS : Yes.

THE CHAIRMAN : The point put to us was, supposing this was the case-- the CLC didn't do this job directly - in contacting all its million members but it did send out a brief to its delegates, who come from all across Canada and supposing it happened that the delegate in Hamilton had not done his job in informing his members - then would not your Hamilton case be a

complete distortion of the situation.

MR. SAUNDERS: It would be possible as with any sample - a statistical coincidence - that one could be different from all the rest. Hamilton in effect is a sample of a sample - it was a test case.

THE CHAIRMAN : You see we are here trying to measure a national opinion.

MR. SAUNDERS : I don't think sir that the report has anywhere said that this is a national opinion. This was a case history of labour - taken in a labour town.

THE CHAIRMAN : But what it has been used for by the people who employed you is to throw doubt upon the accuracy of the brief of the Canadian Labour Congress in representing the views of its membership. That is the suggestion which has been made to us. I am merely raising with you the question of whether or not the use of a single sample in Hamilton is a valid one ?

MR. SAUNDERS : Practically. I am satisfied that it is quite valid because of the fact that I know from experience that with 12.7 per cent of the rank and file labour people of Hamilton were involved --- it is not excessively high,

We know from experience the amount of work involved in getting one fact across, to the people. We know for example that on the eve of an election that perhaps 10 per cent of the voting age people don't even know there is going to be an election. So therefore, I would be amazed, truly amazed, on the basis of my experience, if more than 15 per cent of the rank and file labour members were aware of the CLC brief.

MR. COYNE : Is your 10 per cent figure of

the people without knowledge that there is going to be an election based on the national sample?

MR. SAUNDERS : The national sample - yes.

MR. SAUNDERS: To get a national sample instead of getting a case history as was done in Hamilton, which is done with the market research, if you are going to test a product you have to put it in the stores in a community and see what the reaction is; there may be some difference in different cities as to whether there is an acceptance or rejection of that product, but it is logical to assume if it is sold in one community it will go nationally.

MR. COYNE: But it does depend on the product being put out in all the cities in the same way as the sample city?

MR. SAUNDERS: Yes.

MR. COYNE: So that this analogy may be used, the product is the instance to which the local labour organization take pains to circulate among its members the fact that a brief is being submitted ?

MR. SAUNDERS: Yes.

THE CHAIRMAN: Mr. Saunders, we were not raising ourselves any question about the work you had done, merely the application of that work and the suggestions coming from it. We are grateful to you for coming and giving us the story. Is there any other matter?

MR. ESTEY: There is one point on this survey which is merely factual, which might set the record right. The CBC has two transmitters, each 50,000 watts in power, halfway between Toronto and Hamilton; in fact, closer to Hamilton than to

Scarborough, and the private stations in Hamilton are only 5,000 watts. It was remarked that this may not be a good place to test the CBC programmes, and I thought I should point that out.

THE CHAIRMAN: Someone did say there was no CBC station in Hamilton, and I was merely taking that.

MR. ESTEY: That is not accurate, I do not think.

THE CHAIRMAN: Well, is it worth our while trying to start another section this afternoon? Have you any information, Mr. Henderson or Mr. Estey, as to how long you will be? You plan perhaps to go through Supplement 16?

MR. HENDERSON: That is right.

MR. ESTEY: There are parts we have covered and I do not think we will go into it again.

THE CHAIRMAN: What about the other numerous filings you have given us?

MR. HENDERSON: We are not contemplating those; they have been filed and we are relying on Supplement 16.

THE CHAIRMAN: Then we will go along in the morning and I think we will certainly take all day with you tomorrow. I hope that does not upset you, Mr. Henderson?

MR. HENDERSON: As you know, I may have another commitment at a moment's notice, and I trust the Commission will understand if I am not here for part of the day.

THE CHAIRMAN: Very well, I think we

will go ahead and get as far as we can with this tomorrow, and if need be resume on Tuesday. We will see if we can get through tomorrow. I do not propose to sit long hours tomorrow merely in order to finish, because I think we want to do this with everyone being fresh.

MR. HENDERSON: I take it from your remarks it is not intended to sit on Saturday?

THE CHAIRMAN: That is right; we have made certain commitments that we cannot avoid for Saturday. We will adjourn now until tomorrow morning and if need be resume on Tuesday.

---The hearing adjourned until 10.30 a.m.,
Friday, October 5, 1956.

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ROYAL COMMISSION

ON

BROADCASTING

HEARINGS

HELD AT

OTTAWA, ONT.

OCTOBER 5, 1956

v-44

ROYAL COMMISSION ON BROADCASTING

Ottawa, Ontario,
Friday,
October 5, 1956.

PRESENT:

MR. ROBERT M. FOWLER	Chairman
MR. EDMUND TURCOTTE	Commissioner
MR. JAMES STEWART	Commissioner

- - - -

MR. JOHN M. COYNE	}	Counsel
MR. A. J. de GRANDPRE		

- - - -

MR. PAUL PELLETIER	Secretary
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FINAL SUBMISSIONS:

Canadian Association of Radio and
Television Broadcasters
(Continued)

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Ottawa, Ontario
Friday,
October 5, 1956.

THE CHAIRMAN: Mr. Coyne, am I right in thinking you have completed your questioning on this first section that has been presented?

MR. COYNE: That is correct, Mr. Chairman.

THE CHAIRMAN: Mr. Henderson and Mr. Estey, are you going to proceed from there?

MR. HENDERSON: Yes, I think Mr. Estey has a few comments to make before reading the next part of Supplement 16.

MR. ESTEY: Mr. Chairman, in order to make it clear as to our bare bones proposals and views which are set out in 21 pages of Part I, we felt it may be advantageous to take two minutes now to set out the proposals and then read Part II.

Our proposals can be succinctly stated in two parts: first, we propose the separate administrative body, and secondly, we propose competitive television licensing. These proposals are based on two sincere beliefs of this association: firstly, we believe that broadcasting as an art and science must be regulated in the public interest. However, we believe that we have shown that we are in daily competition in our business life with the CBC and, therefore, we think it is neither fair nor sound that the CBC should regulate our business life within the field of broadcasting. Secondly, we believe that Canadian broadcasting has come a long

way since 1932 and 1936, and we think it can do more for the public in the national interest without cost to the taxpayer than the present framework permits. That, in broad outline, is our proposal.

THE CHAIRMAN: Will you repeat that last statement again? I didn't really get it.

MR. ESTEY: We can do more for the Canadian public and in the national interest in the field of broadcasting than the present statutory framework permits.

THE CHAIRMAN: Yes, but I thought you said something about at no cost.

MR. ESTEY: I did: at no cost to the taxpayer. Private enterprise will establish facilities over which it will perform a broadcasting service without cost to the taxpayer -- to the public treasury.

THE CHAIRMAN: Well, you mean, in other words, that there would be more commercially supported programmes and services?

MR. ESTEY: Yes.

THE CHAIRMAN: More advertising content -- not necessarily more advertising content, but more programmes supported by advertising money?

MR. ESTEY: Yes.

THE CHAIRMAN: That is the way in which more can be done at no cost to the Canadian taxpayer?

MR. ESTEY: That is the way private enterprise will operate in the field and does now. In a

general way from a legal and technical viewpoint we are merely saying that section 8, which is the code under which the Corporation decides its operating functions, would remain as the broadcasting code. Section 21, which is the regulatory code, would be moved out of that statute, and the functions there delineated according to a separate administrative body. We feel for completeness that the Radio Act, and the functions set out in it, should likewise be brought under this new regulatory body.

THE CHAIRMAN: But in moving Section 21 out of the Broadcasting Act, you are not suggesting that any items should be lost in transit?

MR. ESTEY: No watering down. On the question of competitive television, our position can be simply stated that surely it is better that Canadians should be permitted to look at Canadian privately-owned television stations than forced to look at foreign privately-owned broadcasting stations, which is the effect today.

In summary, therefore, what we are proposing is that the present electronic age, or the development of it, not only justifies, but requires that the administration of this complex and broad field be brought within a single authority both for equity at home and for effectiveness abroad.

That, in summary, is our submission.

THE CHAIRMAN: But it is a different single authority to the single authority that now exists?

MR. ESTEY: Oh, yes -- our new administrative board.

THE CHAIRMAN: In your contention, at least.

MR. ESTEY: Yes. At page 27 we commence competitive television licensing. We have dealt with one or two paragraphs, and with your permission I will omit those, or touch on them lightly as we go through.

THE CHAIRMAN: Yes, those are the technical ones.

MR. ESTEY: Yes.

It is a primary submission of this Association that Canadians are entitled to look at or listen to any station or programme as they may individually desire and should have a choice of more than one station or programme from Canadian sources, providing, of course, the requisite channels are available. This is the case with radio and should be the case in television. No application for establishment of television facilities has been turned down by reason of lack of channel. The only serious reason that can be given for the establishment of the State monopoly in the six large population centres can be a fear by the Corporation of competition or fear of loss of revenue. Commercial revenue loss through competition has never been proven to be the case. The situation prevailing in radio broadcasting should completely answer any such argument.

Competitive radio broadcasting in Canada resulted in revenue adequate to finance all stations and three national networks.

THE CHAIRMAN: What do you mean by that? Surely competitive radio broadcasting in Canada didn't really result in enough to finance three national networks?

MR. ESTEY: Well, we are not arguing about --

THE CHAIRMAN: I am trying to get your meaning.

MR. ESTEY: Well, what we are trying to say is, accepting the CBC's briefs at their face value, their experience in radio, from an accountant's analysis, resulted in a surplus, during the radio era. Television has thrown them into a deficit perhaps. It is an accountant's argument that during the competitive era radio broadcasting was run, by the CBC's briefs, at a profit and resulted in a surplus.

COMMISSIONER STEWART: Oh, surely no. Only by reason of getting excessive grants they had a surplus, but they didn't make a profit.

THE CHAIRMAN: You are suggesting the competitive value in radio broadcasting resulted in revenue adequate to finance all stations and three national networks. You are surely not suggesting that you rule out of account all the tax money?

MR. ESTEY: I am glad the issue has come up because the financial statements filed by the

Corporation, and their press releases, invariably state, "We have a surplus".

THE CHAIRMAN: Well, of course, but they don't have a surplus resulting from competitive radio broadcasting, which you are saying here.

MR. ESTEY: By a combination of sources, and certainly their radio revenue was a very substantial item in the heyday of radio. I am not talking about today, or the last three years.

THE CHAIRMAN: Well, I don't have all the figures here, but from recollection I would seriously doubt whether the commercial revenue in radio at any time approached any majority part of it. If it wasn't from license fees, it was from tax grants. But you seem to be arguing here that competitive commercial activities are self-supporting, and that they are capable of providing for Canada, and did in radio provide, three national networks and financed all the stations, and it just simply is not so.

MR. ESTEY: Perhaps it would be economic of the Commission's time for us not to debate it, because those facts are all available and much more available to the Commission than they are to us. I understand the accounts are being audited.

THE CHAIRMAN: It is not a question of auditing. It is a question of what you mean. You are formulating an argument based upon the fact that competition -- that if you have more competition

in television stations you will do the same thing as you did in radio?

MR. ESTEY: That is right.

THE CHAIRMAN: And then you go on to say in radio we were able to have adequate revenue to finance all stations and three national networks because of radio broadcasting, which is not so. You are founding an argument on it.

MR. ESTEY: Yes, that is right, based on the accounts as we see them in the CBC briefs.

THE CHAIRMAN: Yes, but you were not deluded by the "surplus" in name?

MR. ESTEY: I tried to trace from 1940 through to 1955 what happened in the CBC accounts and, without taking into account Parliamentary grants, and from a lawyer's point of view it is an accounting impossibility to make that analysis. They say it is left with a surplus, and I am left with that. I know there is a \$6-1/4 million grant in these three years, and also the 15% excise tax, but taking all that into account they move those things around and also move their reserves around and end up with a surplus. You can't tell whether it costs money and is a drag on the commercial or not. We don't know how much came from radio advertising, but they say, "We had a surplus", and when you subtract their grants it looks as though they are right. That is what that sentence means.

The Corporation's radio station

in Toronto, CJBC, devotes less than 25 per cent of its time to network activities, has a commercial department in the same way as a comparable private outlet, is in fact operated in much the same way as a private station, and has continued a profitable existence in such a competitive situation.

THE CHAIRMAN: Is that also a statement of fact?

MR. ESTEY: That is a statement of fact from our observations, and we, of course, are not permitted to see CJBC's profit and loss statement. We don't know it to be actually true, but from an observation point of view we say it is a fact.

THE CHAIRMAN: Well, "an observation point of view"; I don't know how you can, looking at a company or a station, say it has a profitable existence.

MR. ESTEY: We could make a much more intelligent analysis of that if Parliament could get the information, but on checking the Parliamentary reports we find they refused to give it.

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THE CHAIRMAN: Well that may be.

MR. COYNE : But why do you say that if the information is not available to you - would you not have to have information to which to base a statement to that effect?

MR. ESTEY: Because these people are experts Mr.Coyne - and they listened to that station, not for the purpose of entertainment, but to find this out.

THE CHAIRMAN : I would like to have some of your experts around because, if they can listen to a station and know whether it is continuing a profitable existence, they would be very valuable characters to have around.

MR .ESTEY: Well they consider they are valuable.

THE CHAIRMAN : How can you say that from an observation of a station from the outside, that it is continuing its profitable existence?

MR. ESTEY : Well the station sir, is 75 per cent a non-network operation of the CBC, and if it is not in fact commercially profitable and it has a commercial future - why would it be continued ?

THE CHAIRMAN : Well - to provide a national service.

MR. ESTEY ; But the National service sir consists of advertising the local offices of Household Finance and Toronto Daily Star and others.

THE CHAIRMAN : Oh no - the originating stations and programmes are Dominion network programmes.

MR. ESTEY : Which consists of 25 per cent of their time and they certainly don't originate whole network performances.

THE CHAIRMAN : At any rate you don't really know at all whether this has been a profitable existence or not - do you?

MR. ESTEY : We won't go that far because the people engaged in the business were watching it operate and they say it is profitable.

THE CHAIRMAN : Oh I see.

MR. ESTEY: Submissions by the Association of Canadian Advertisers and this Association indicate clearly that very considerable additional revenue is available to finance additional television service to the Canadian public. See especially supplement No. 17. A further illustration would be the well-known experience in the United States where two television stations have created more than twice as much advertising revenue and twice as much program activity than one located in the same community. Indeed we have the example of the Minneapolis station owner who announced publicly his hope that a competitive service would soon be established in that area.

State intervention in radio broadcasting was at one time largely justified on the grounds of expressed need for "national" coverage, especially to "remote or outlying areas". This policy led to the establishment of regional high-powered transmitters across the country, some local stations, and many "repeaters" or relay stations. Most of these stations represented duplication of existing private facilities. In some cases, distribution of Corporation programs was removed from the facilities of private stations and taken over by these transmitters operated by the Corporation itself. This policy was followed under the interpretation of Section 8 of the Broadcasting Act as requiring the Corporation to provide a

"national" broadcasting service.

This policy has been completely reversed in television. CBC has interpreted the unaltered Broadcasting Act as requiring placement of all its physical television investments in the six largest centres of population, leaving the outlying regions dependent upon investment of private capital. As it turned out, this was a reasonable risk because Canadian enterprise has been willing to invest its capital in these outlying districts notwithstanding the unwillingness of the State agency so to do.

It has frequently been stated that large sums of money coming in the main from the public treasury have been expended in the provision of the national broadcasting "service" to these other areas. Yet this service reaches the bulk of the Canadian population from private outlets, which are not paid for that period of the national program service which is not commercially sponsored and paid at a much lower than normal rate for commercial programs. This contribution by private broadcasters of capital facilities and operating expenses is substantial even if there is not taken into account loss of income by reason of this use of their facilities.

Considerable has been said by the Corporation about difficulties experienced because of United States television competition. Most recent surveys indicate that

Canadian viewers are in fact reaching out for United States service. In the early days of radio broadcasting in Canada a like situation existed. This situation was corrected as channels were utilized and additional service provided by Canadians to Canadians. It was the invariable experience that when a second station entered any area the listening to both increased and listening to United States stations decreased. A sample of this trend is given in a special resume prepared by Elliott-Haynes Limited and attached as Annex "A".

Full utilization by Canada of television channels will have the same end result -- more Canadian viewers being directed away from United States stations and viewing Canadian stations.

There is, of course, the serious possibility that if the present artificial restraints are continued, Canada will lose the channels presently assigned to it and these will be taken over by the United States. In Buffalo for example there have been reported efforts to obtain additional channels and it would seem unreasonable to deny the United States the use of channels available in that area if Canada is not making use of them.

It has also been said by the Corporation that the licensing of additional television outlets to private individuals will vastly increase the burden on the Corporation because it would and should be required to make available "national

programs" to those outlets. It is odd that such should be the case in television and quite the opposite prevails in the case of radio. Certain "national" and other programs of CBC radio networks are not only not available to many private stations but prohibited to them. Many private stations carry no CBC programs whatever, not because of any refusal so to do but because they have never been invited to do so. It would seem strange that this unusual effort on the part of the Corporation would be required to make its programming available to new television outlets. This could be done by appropriate third party regulation in either radio or television broadcasting to the extent any such unusual edict might be felt necessary in light of prevailing circumstances at any given time.

At the present time Canadian advertisers spend approximately \$2½ million a year on United States television stations. See also supplement No. 17. It seems strange that this development involving the exportation of Canadian advertising funds is a necessary result of a "national" broadcasting service.

Licensing of competitive television stations throughout Canada would reduce United States penetration, increase interest in television, enlarge audiences and set sales, keep Canadian advertising expenditures at home and increase the opportunity for employment in

Canada by persons engaged in television broadcasting. It would correct the present situation in which the Canadian voter pays for no choice. By provision of additional programming, and additional pools of talent, it would hasten provision of television service to smaller and outlying areas.

THE CHAIRMAN: How do you pay for "no choice"?

MR. ESTEY: Well I suppose that is an over-reduction in terms, but I think what is intended is that they are paying the bill but they have no alternative.

THE CHAIRMAN: That may be.

MR. ESTEY: The Corporation has stated in connection with such a development that it would then be necessary for it to erect competitive facilities in areas now occupied solely by private stations. We favour competition. But we believe that the Corporation should be required in the same way as private applicants are and will be required to show that the erection of any new stations is in the public interest or is a matter of public convenience.

General public opinion on this point is contained in supplement No. 4 of this Association's presentations to the Commission. This demonstrates that 63.2% of Canadians favour competitive television servicee

The Canadian Broadcasting Corporation in its first main brief to this Royal Commission

opposed the possibility of competitive television service, but suggested instead alternative service in the six major areas now exclusively reserved for the Corporation's television facilities. This suggestion was predicated on the assumption that any second or alternative service would be provided in one form or another by the Corporation itself. This Association has engaged the services of The Canadian Institute of Public Opinion, whose background and qualifications are outlined in covering letter, attached to supplement NQ4 to take a special public opinion survey on this suggestion. This survey, taken in the six major centres now reserved exclusively for the Corporation's television facilities, shows that 57.2% of the citizens in those areas prefer a truly competitive television broadcasting service owned and operated by non-government interests, whereas only 21.2% of the citizens prefer a CBC service. Details of that survey are attached hereto as Annex "B".

Responsible groups appearing before this Commission in Winnipeg, Vancouver, Toronto, Montreal and Halifax have made it clear that they are willing to provide competitive television broadcasting service, that they are prepared to do so without any form of assistance or subsidy, direct or indirect, from public funds, and that they are prepared to assist if necessary in the distribution of programs produced by some state

agency if it be felt that such distribution is desirable in the public interest. In either case, no necessary increase of Corporation production or shipping costs follows.

We suggest that this issue is a simple one -- the right of Canadians to have a freedom of choice, from Canadian sources, and the right of those Canadian citizens willing to risk venture capital to do so. Competitive television licensing will aid full development of this new art, keep pace with Canada's expanding economy, and transfer a large part of development cost from the taxpayers to industry.

THE CHAIRMAN: I think we might do as we did before, Mr. Estey, and deal with the question arising from that part of your submission. Mr. de Grandpre, do you have any questions.

MR. de GRANDPRE: Yes, Mr. Chairman, Mr. Estey, I would just like to make sure that I understand this sentence correctly. It appears that paragraph 1 on page 21 when you say that the CBC has refused to allow competitive television. You say that it could be by fear of competition or fear of loss of revenue.

Do you have two separate thoughts there or is this the same thought expressed by a disjunction.

MR. ESTEY: Well, I think that is two thoughts. It is true that competition would

lead to loss of revenue, but at the same time there is the basic fear -- to put it in the vernacular -- of being shown up, and one doesn't invite that, particularly, if one has the power to forbid it.

MR. de GRANDPRE: But why would there be fear of competition in the television field while there was no such fear in radio -- with the same organization and the same competitors?

MR. ESTEY: Well, first of all there was such a fear in radio, and perhaps that is where they learned their lesson, and one would not want to invite the same situation again if one had the power to forbid it. They just don't allow competitive television licenses, and you also have to accept the fact that private radio was in there when it was born -- that is, the CBC. Then we have the rather unusual example in the case of the last license granted to CHCH Hamilton where the Corporation said "you can have a license, but you must design an antenna which would keep your signal out of Toronto.

First of all, Toronto does not keep its signal out of Hamilton. There is no real intellectual integrity on the part of the Corporation.

THE CHAIRMAN: But you are talking about something on which we have really had no evidence -- and I take it that the intellectual integrity presumably may not enter into it, it

may just be a matter of technical problems. You don't really know whether it is or not anyway.

MR. ESTEY: Well I do -- I do. Mr. Chandler has gone away and so has Mr. Finlayson. Mr. Chandler is on his way to Vancouver, and Mr. Finlayson is in Venezuela, but I do know that they were required to establish a directional antenna to keep the signal out of Toronto.

THE CHAIRMAN: But the reason may not be as you suggest the clear question of intellectual integrity or the reverse. It may have been merely for practical reasons.

MR. ESTEY: We are advised that there are no practical reasons for restricting the contour lines of CHCH Hamilton to keep it out of Toronto. The channel is Canadian and it is free for complete directional broadcast from Hamilton and, in the CBC's decision, there was no reason expressed on technical grounds.

THE CHAIRMAN: Well really, Mr. Estey, on this question of Mr. de Grandpre's -- in the light of the knowledge you must have about the establishment of a single channel policy, are you not really going further than you need to go by this business of fear of the corporation of competition or fear of loss of revenue as the only serious reason that can be given -- -- you know that the single channel policy was determined by the Government in order to get

going with the new medium to get it spread across the country evenly rather than the way radio did in fact start, with a concentration in the more populous centres. And there should be, they thought, a more sound basis which would help with the work later if we started out in this way.

Now, you can argue, if you like, that it was an unnecessary decision or you can argue the decision has served its usefulness, that we are at a stage where we ought to go further, this is something else, but why do you need to say the only serious reason, fear by the Corporation of competition or fear of loss of revenue seems to me it is not built-in bias on your part, it is a built-in headline.

MR. ESTEY: No, not at all, we have said that for a long time and said it to the Corporation at its hearings. But, I would like to get on this slightly different basis, I know when we level this charge, we are not necessarily limiting our charge to the CBC, I know it is a government policy we are speaking to.

THE CHAIRMAN: You say by the Corporation.

MR. ESTEY: We do know that policy was followed by the CBC as advisers to the Government, they are the Deputy Minister to the Minister in charge of the CBC. But, let me take issue on one further thing, if I may, that TV did go into the big cities, Government TV just as much as radio, or more than radio developed in the big cities, the national service did not go to the ends of the country the way Mr. Frigon said, we must carry it to the remote areas and this is not what they did in television. It could be there was a good reason but from the point of view of the people engaged in the industry, and it may sound arbitrary, but we are sincere, the only reasons we could define for this policy are the two set out here.

THE CHAIRMAN: Is it not true that this policy, this single channel policy has been put before Parliamentary committees on at least one and perhaps two occasions; that it was open for debate before the people that are responsible for this, the elected representatives in Parliament with adequate chance for public opinion to reflect itself if it was contrary to this, how can you say this is just a lot of fooling of this Corporation with the Acting Deputy Minister, they put in the policy and nobody else had anything to do with it. This was determined government policy not based on CBC alone and not without being subjected to adequate discussion by the Parliamentary committees. Now, it may have been wrong, maybe we should change it now but why do you have to say it was because of fear by the Corporation of competition and fear of loss of revenue?

MR. ESTEY: Let me answer this way, if the CBC wanted competition in the six big cities I am sure the policy would have permitted, if the CBC had not recommended this policy we are confident that the policy would not be here today. Starting from that proposition we must ask ourselves why does the Corporation not recommend competition television licensing? That is a difficult question to answer but again adopting Mr. Henderson's remark of yesterday, let us take the results, let us take the conduct as giving the lie to the state of mind. We say it is

competition either commercial or audience competition which makes them fear.

THE CHAIRMAN: I think you are on a slightly different point when you say, "Why does it not now recommend a change of policy", because your statement here is that the only reason that could be given for the establishment of this is this fear?

MR. ESTEY: Yes, but four years ago when it was started it was a constant policy and we assume since they did not ask for a change of their state of mind that now it is the same.

THE CHAIRMAN: There may be many good reasons for abandoning the policy and maybe valid things can now be done that could not be done four years ago. It seems to me it is much stronger ground when we put it that way than to throw criticisms and say this is the only reason when you know that there was another reason.

MR. ESTEY: We cannot honestly agree that we know there was one other one because from the Corporation's viewpoint there was nothing to indicate there was any other reason.

MR. deGRANDPRE: That was exactly my next question, when you say that commercial revenue loss through competition has never been proven to be the case as an answer to the CBC's viewpoint do you not feel it is an oversimplification of the argument put forward by the CBC? I am going to read from the CBC main brief so that the full thought

will be carried. This is at page 41 of the main brief:

"As has been pointed out such stations operating on their own, on a purely advertising basis,--"

And he is referring to competitive outlets:

"-- would not be able to produce or carry any appreciable amount of Canadian programming in the face of the pressure of economic and commercial arithmetic."

Then, I am quoting from the end of the same paragraph:

"If allowed, connections south with United States networks at different points of the border would almost certainly develop."

And then at the beginning of another paragraph:

"The main effect of second stations will be to intensify the basic pressure of American programming against Canadian programming which is already very strong. In this case it will come with particularly direct force, right through Canadian air channels."

MR. ESTEY: Is that page 41?

MR. deGRANDPRE: That was page 41 and 42.

In other words, the reasons given by the Corporation--

MR. ESTEY: I wonder if I could ask you where it is on those pages?

THE CHAIRMAN: Have you both got the same volume?

MR. deGRANDPRE: Brief 12, a memorandum to the Royal Commission on Broadcasting, pages 41 and 42, the last paragraph which starts with the words:

"The establishment of 'second stations' in some areas would bring some new factors into the Canadian television system."

MR. ESTEY: Thank you very much, I have found it now.

MR. deGRANDPRE: So that the argument of the Corporation is that the force of economics would necessarily induce the private stations to broadcast American imports or importations with the result that you would no longer have the same amount of Canadian programming on the Canadian stations, the private stations, the cost would be reduced, the advertisers would thereby, be induced to purchase time on the private outlets thereby reducing the commercial revenue of the CBC which is a different approach from the simple statement that commercial revenue loss and competition has never been proven to be the case. This could be true when you have two competitors which are offering the same product but apparently here the product would be different. I would like

to receive your comments on this proposition of the Corporation.

MR. ESTEY: Well, I agree you put their case on the highest possible plane and as effectively as it could be put against competitive television but are there not some other facts? First of all, the connections north and south are now and always can be controlled by regulations; secondly, the programme content is now and always can be controlled by regulation; thirdly, are we any better to control the so-called Americanization of Canada by controlling what portion of this so-called Americanization comes over the air than to leave the channels vacant for uncontrolled direct Americanization?

MR. deGRANDPRE: Do I take it your answer to this statement of principle or fact by the CBC is that private stations should be controlled as to the programme content and as to the percentage of Canadian production whether live or recorded?

MR. ESTEY: Well, we say that if the regulations are truly borne of the public interest that private broadcasting industry must live within them or die within them. We think that the private broadcasting industry can live within regulations in a true public interest and if that means controlling Canadian content that is what it means. Let me answer a little more fully on the question of the north and south connections;

I understand there are no radio stations in Canada -- no TV stations in Canada connected with the United States networks except through the Canadian Broadcasting Corporation.

THE CHAIRMAN: That, of course, is so now because all stations are on the existing single-channel network or will be when the microwave is in; it is in a sense even now but it does not necessarily follow --

MR. ESTEY: The rule can be continued, we are not asking for a change for the present conditions. Right now we have lots of live Canadian local production on television and there are no connections with the United States market. I do not like to even leave the answer at that because it seems to us that the fear of Americanization is becoming every day more of an imaginary bogey than it ever was before. If we were going to be swallowed up culturally it would have happened a long time ago and, secondly, why are we afraid of being swallowed up by the television factor; what about our motion picture houses, we have no Canadian content; what about the American press, we do not regulate that, we try to regulate the magazines but only from a taxation viewpoint and that with some misgivings in some quarters.

THE CHAIRMAN: I think your analogy to the press is not a very good one because newspapers are local, as you know. Your moving picture one is a valid one and we have had a good deal of evidence

expressing concern about it.

MR. ESTEY: Well, anyone that has something to sell or anyone that has a troop to keep together is vastly assisted by the presence of some stronger force. Now, if the fear of Americanization is the external force then to keep our present policy afloat I think we should examine whether that is valid.

THE CHAIRMAN: It may be to keep our present country afloat.

MR. ESTEY: It may be, all we are asking is that it be examined critically or not accepted.

MR. deGRANDPRE: But basically you agree there should be some kind of control over the content of programmes?

THE CHAIRMAN: I think we have that.

MR. deGRANDPRE: That is quite clear, is it? Now, do you feel that this should be done as a condition of the license or, as you indicated before when you were talking about the independent board, or do you feel it could be better performed by regulations which could be amplified if not from day to day at least periodically which cannot be done for a license.

MR. ESTEY: I am glad you asked me that question, Mr. deGrandpre, because when the point came up originally in connection with the draft bill I did not remember just why we did it that way. But, on reflection, on looking at other

statutes I see why we put that type of regulation into the license, we grabbed that out of the Aeronautics Act, that is the way the Aeronautics Board decided; they put on conditions subject to which the operator must deliver the public service into the license but we are not wedded to that, we do not care which way it is done.

THE CHAIRMAN: I think dealing with competitive television suggestions the question was directed to this, we abandon the single channel policy and move to competition from alternative licensing of channels wherever those channels are available. Then, the question is what is the best way of assuring adequate performance by those private stations or by those CBC stations if they should be CBC stations in some cases. You are asking for private ones, of course, and let us stick to that; what is the best way to ensure a satisfactory programme performance that would get away from the possibility I put to you yesterday of showing nothing but ten year old movies?

MR. ESTEY: I think the best way is not the way we have it actually drafted here but to move it back into the regulation list on powers of regulation.

THE CHAIRMAN: And it should be in there as a regulatory board capable of change rather than just the rigid business in the license?

MR. ESTEY: That is right.

MR. deGRANDPRE: Do you not feel if you have competitive television this will have the

tendency of increasing the cost of production because there will be competition for talent and competition for personnel with the result that instead of being able to produce a programme for X dollars you would have to pay X plus some dollars in order to get the talent and the personnel.

MR. HENDERSON: Mr. deGrandpre, we believe competition never increased costs but reduced them.

COMMISSIONER STEWART: We have evidence very much to the contrary of that.

MR. HENDERSON: I believe that firmly. Let me give you some examples of this; there is no incentive, no basic incentive to improve at the present moment on the part of the CBC in the television sphere. Notwithstanding the lengthy delay that took place between the decision to go into television and the reality, many basic, obvious mistakes were made, detailed mistakes some of which I propose to mention to you. In other words, the incentive to save is not there and in the absence of that incentive to stop extravagances taking place, this is eliminated by the spur of competition.

THE CHAIRMAN: That wasn't what you said; you started out to say competition never increases the cost.

MR. HENDERSON: When I say cost I am speaking of the overall cost. I think that competition does result in savings. Surely competition is the best spur to the rationalization of cost saving. Certainly extravagances are inherent in any system without competition.

THE CHAIRMAN: Have you talked to the operators of the BBC and ITA in England? They have competitive television there.

MR. HENDERSON: I haven't had any discussion with them so far as their costs.

THE CHAIRMAN: Their remarks to me were quite different, and it was that their costs materially increased with competition. Therefore, in this field, some of the classical rules of cost on television may not apply.

MR. HENDERSON: We are satisfied there is established a considerable saving in expense of the taxpayers' money if there is the incentive spur of competition.

THE CHAIRMAN: That may be your opinion but we are trying to look at the facts, and the facts we have in a reasonable analogous situation ---

MR. HENDERSON: Let me give you ---

THE CHAIRMAN: Just let me finish, please. In a reasonably analogous situation, where you have a monopoly system operating and you add to it competition, it has, in fact, up to

now increased the cost. You can say, if you like, you don't think that applies to Canada.

MR. HENDERSON: No.

THE CHAIRMAN: You can say, if you like, you think it will change in Britain, but you cannot say competition never increases the cost, and that is what you did say.

MR. HENDERSON: Perhaps I should explain that that may increase certain costs but it does lead to certain savings, and the question is where is the net result.

THE CHAIRMAN: I would go along with that.

MR. HENDERSON: We feel there are wastages that are eliminated which are in the public interest. That is the point I was making when I made the general statement, and we feel there are many extravagances that would be eliminated -- many matters of planning that would have been dealt with had there been the spur of competition. We have some examples, if the Commission is interested.

Let us take the television situation in Toronto. I am satisfied that the television antenna which is on Jarvis Street, is in the wrong location for maximum coverage, although that is a small thing and doesn't sound like very much in itself. Five years of planning of television in that area is a substantial period of time and the investigation and selection of a channel with sufficient coverage, at considerable expense, was done and now it has to be changed to Channel 6, which it should have been in the first place. The

erection of television aerials in a highly built-up area was also unduly expensive. There is no adequate provision for storage and very expensive warehouse storage is being used in the middle of Toronto. Props are scattered in eighteen warehouses over the City of Toronto. All those things add to the expense and there isn't the spur to eliminate that kind of expense in a situation where you have a monopoly. We don't think that the basic incentive is there to save in the absence of competition.

MR. ESTEY: There is another aspect as to whether or not competition increases costs. What do you mean by cost? If both organizations went out to buy identical services, how could we argue it didn't increase the cost. Obviously the holder of the services would take an option which he cannot do without a buyer if the end result is to be achieved. I have a clipping from the Toronto Daily Star, the 4th of October, which illustrates the type of thing the advertiser in Canada does not like. He doesn't want to buy the extravaganza; it is not necessary in order to supply good entertainment. It is big, but not necessarily good.

"The opening production last night of CBC's television show, Cross Canada Hit Parade, was so large that the studio parking lot had to be used as a stage.

"A cast of more than 200, three circus elephants, a rollercoaster, ferris wheel, and squad of clowns, jammed into

the parking lot, while fascinated passers-by lined the street to watch.

"To add authenticity to the carnival theme of the production, 100 children from East York Community Centre were recruited. They rode the rides, followed the clowns, and provided the background.

"Busiest performers were the elephants. After the CBC show a police escort brought them to Maple Leaf Gardens where they participated in the last act of the Rameses Shrine Charity Circus."

Well, as one private broadcaster said, why didn't they use "Three White Mice". That kind of thing is what is making it difficult for Canadian advertisers to buy Canadian shows.

THE CHAIRMAN: The point of our question about control is to make sure private advertisers don't use Three White Mice.

MR. ESTEY: That is not necessarily good entertainment, but it is expensive entertainment. We are not looking for that kind of competition.

THE CHAIRMAN: It is half way in between. I would be inclined to agree with you that the kind of competition you have in mind would not increase the cost very much, if at all. I would also be inclined to agree with you, if they all want to do exactly the same type of thing, it would

increase the cost. Probably it would be somewhere in between there, which would, therefore, increase the cost somewhat, and, as Mr. Henderson says, where the balance lies it would be very hard to tell.

MR. ESTEY: Very hard to tell, and I would like to finish my argument by saying you just cannot see that far ahead.

MR. de GRANDPRE: Turn to page 22. You say in the middle of the paragraph:

"This policy led to the establishment of regional high-powered transmitters across the country, some local stations, and many 'repeaters' or relay stations."

Do you imply by this statement the CBC should not have installed or erected large stations or transmitters in some parts of the country because these sections of the community were already served, and that, by implication, the CBC should not have had these stations and should have concentrated on the production of programmes in one or two centres? Was this the implication of this statement?

MR. ESTEY: No. All we are trying to say there, Mr. deGrandpre, Section 8 requires the establishment of a national service. It has not

been amended since 1936, yet they attack it as a radio problem with one interpretation, and that is we should cover the outlying areas, which undoubtedly is a good policy. How could anyone say the urban population has paramount rights to the outside elements? We think that is good policy, but, apparently, you have to have State broadcasting and you must always remember our philosophy does not go that far. But when you come to television it doesn't quite follow. They go into the big centres and monopolize it. We think it is wrong, and we think it is also wrong that the private station should monopolize the outlying areas. I don't want to take time to document it but it is all there on page 24. The CBC says that it would be necessary to erect competitive facilities in areas now occupied solely by private stations. But we believe that the CBC should be required in the same way as private applicants are, and will be required to show that the erection of any new stations is in the public interest, or is a matter of public convenience. We provide the programmes to the outlying sections, we provide the service and we broadcast the service.

THE CHAIRMAN: But the programmes are handed to you on a platter and you put them on.

MR. ESTEY: That is part of our deal that we put them on.

THE CHAIRMAN: But surely you cannot say the CBC is not providing a service when they produce the programmes that go to the outlying

areas.

MR. ESTEY: The physical plant is all ours and the risk is all ours and we have to take the deal. We didn't ask for it. They are not putting those programmes out at their capital expense; it is our capital expense. But in radio that is not so. That was the policy and proved to be a useful policy.

MR. de GRANDPRE: We have been told if not all, at least some of the private television stations could not live if they did not receive these programmes from the CBC because these programmes supplied to the network permit them to operate at a profit, and otherwise they could not.

MR. ESTEY: First of all, Mr. de Grandpre, to adopt the atmosphere of the day, who told you?

MR. de GRANDPRE: We have had a representation -- I think it was out west in either Edmonton or Saskatoon -- the private broadcasters told us they needed these programmes from the CBC in order to operate.

MR. ESTEY: The Saskatoon one I find difficult to understand because I gathered information there for some time from the operator of that station and got quite the opposite story.

MR. COYNE: I wonder if we could just be sure as to what you are saying. You say, we never asked for the programmes, and when you say "we" you are talking about twenty-six private television stations located across the country. Are you implying, in fact, each of those private

stations was prepared to accept the licence at the time the application was considered if there had been no CBC programmes available to it?

MR. ESTEY: Mr. Coyne, in the application form you are asked to state if you are prepared to accept programme service, and that is the beginning and the end. I don't think anyone ever said no.

MR. COYNE: I just want to know what you are saying, and it can be checked, presumably. Are you saying that all the private television applicants were prepared when they made their applications to take on their licence without there being any CBC programmes available? Just tell me whether that is what you are saying.

MR. ESTEY: I cannot answer that question without having the twenty-four of them here to state what their mind was before they made that application. To be absolutely accurate I cannot say the answer they would have made on the application if the CBC were not there.

MR. COYNE: That is all I want to know.

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MR. ESTEY: But I would like to go further and say this: this is a very complicated field. If there were no CBC, and if there were then private distribution agencies, as I understand the rather complicated method of distributing television programmes and films, the stations would easily get them without the CBC, because a great deal that comes through the CBC would come to them anyway, and all the remunerative part comes through them, so I don't know whether you win on the point or whether I do.

THE CHAIRMAN: They would undoubtedly be able to operate, but you are not suggesting they would operate with the kind of programme that we have today?

MR. HENDERSON: I think Mr. Estey has an answer to that specific question.

MR. ESTEY: I am told that of the thirty-five hours of programmes -- and I take it it means in a week -- fourteen hours are American; those we would get, anyway, I presume; eleven are Canadian commercial. I suppose you can argue both ways whether you get them, because there is an element of subsidy in them. Ten are non-commercial; thirty-five in all. In answering your question, Mr. Coyne, you would have to be fair and say that the CBC did or did not exist, and if you suppose it did not exist I think I am quite in safe in saying the applicants would have made the application, anyway. If it did exist, then they would be prohibited anyway from getting direct national programmes, but have them taken

to CBC and then you have narrowed me down to the twenty-four hours a week I may not get. I would be frozen out; I would be like a private station with no affiliation.

MR. COYNE: I think it is more than twenty-four hours a week. You are referring to the service available to the Saint John's station, are you not?

MR. ESTEY: Yes; thirty-five hours a week -- the maximum available; thirty-five a week of which fourteen are U.S.A. in origin, ten non-commercial, and eleven Canadian commercial.

MR. COYNE: We have had evidence the CBC network production on the English network amounts to more than thirty-five hours a week.

THE CHAIRMAN: There are some problems of getting certain kinds of programmes to Newfoundland which reduce the total of Newfoundland's week.

MR. ESTEY: I understand that on the existing microwave network the programming is different, and those are dependent upon the remote kinescope.

MR. de GRANDPRE: Coming back to your brief at page 24, paragraph 10, you say:

"At the present time Canadian advertisers spend approximately \$2½ million a year on United States television stations."

We have heard a lot about this, especially in connection with the Bellingham station.

MR. ESTEY: Yes.

MR. de GRANDPRE: But we never received any precise figures as to the type of advertisers using the American facilities: do you have a breakdown of this \$2½ million spent by Canadian advertisers?

MR. ESTEY: We had hoped to have that information, and we contacted the two Buffalo sources, but we cannot say how much exactly of that is beer advertising, which I think you must know and delete in order to get an accurate statement.

THE CHAIRMAN: I think that is the point of the question.

MR. de GRANDPRE: Yes, that was the point of the question.

MR. ESTEY: I don't want to be tied to this, but our best effort is that \$200,000 is beer advertising.

THE CHAIRMAN: So you have approximately \$2 million of other advertising -- maybe a little bit more -- but since we are in round figures, about \$2 million a year on American television of non-prohibited types of advertising -- that is, non-prohibited in Canada?

MR. ESTEY: Yes.

THE CHAIRMAN: Have you any figure as to what the total television advertising Canadian bill is?

MR. ESTEY: No, we don't -- at least, I don't.

COMMISSIONER STEWART: Where did you get the figure of \$2½ million?

MR. ESTEY: From the advertising agencies.

and from the United States owned stations, but nobody would go out on a line and say, "This is accurate; we are telling you the whole story."

THE CHAIRMAN: Can anyone give me the order of magnitude of what the total -- we may have had it at some time but I have forgotten -- what the total bill is on television in Canada apart from the \$2 million or \$2½ million?

MR. ESTEY: My recollection is that the Advertising Association did have that figure. I think \$40 million was given earlier to the Royal Commission.

THE CHAIRMAN: That is the figure. I just want to get the order of magnitude: if there is \$40 million spent in Canada, then there is \$2 million going to American stations, and the total bill for Canadians on television would come to \$42½ million?

MR. ESTEY: Yes, that is at the present time, and the more U.S. penetration there is it is logical to expect the greater that figure will be, but one should also bear in mind that \$2 million is essentially local advertising in character. You would not have national advertisers over there.

MR. de GRANDPRE: This is concentrated in the Seattle and northern New York areas?

MR. ESTEY: Yes. I don't know that it includes Montreal. It includes Syracuse, Buffalo and Rochester. In so far as the institutions which advertise on them are concerned, it is remarkable to see who they are; they are unquestionably people

who would be advertising on Canadian stations if they existed.

MR. de GRANDPRE: That is all, Mr. Chairman.

THE CHAIRMAN: Mr. Estey, we may have covered the point at the very bottom of page 23. You are talking about the question of whether there would need to be programmes supplied to the second station, and:

"It would seem strange that this unusual effort on the part of the Corporation would be required to make its programming available to new television outlets. This could be done by appropriate third party regulations in either radio or television broadcasting to the extent any such unusual edict might be felt necessary in the light of prevailing circumstances at any given time."

That is a pretty difficult mouthful of a sentence. Am I right in thinking that there you are referring to the point we were discussing earlier-- that is, that if you have a second television station licensed without programmes being supplied to it by CBC that it would be appropriate to have some regulation as to its programme content and as to its general performance as a station in the regulations?

MR. ESTEY: Yes, there are really two things there, and I quite agree that sentence is pretty unwieldy. There are two distinct things: one is the Canadian content would unquestionably

come under regulation by the independent board, the way it is now. The second thing is that that board may say to a new station, either before it was licensed or at any time during its life, "You must carry the Corporation programmes at certain times." So, there are two distinct problems. I think the "unusual edict" is based on this, that if the Corporation has a programme which is going out into the area covered by the private station it would be unusual to order the private station to also carry it. If it is a separate programme, it would not be unusual.

THE CHAIRMAN: The main point is, when you are talking about appropriate third party regulation, you are talking about some form of control over the programme content and performance of the second station?

MR. ESTEY: That is right.

THE CHAIRMAN: I am not trying to trap you or anything; I just wanted to know exactly what a difficult sentence like that meant.

A general question: rightly or wrongly I have gained the impression from a lot of comments that you and your clients have made to us that there was a good deal of friction, perhaps, in the radio field, but that the situation was somewhat different in the television field. I have got, rightly or wrongly, the impression that there has been a pretty good working arrangement, collaboration, in the television field, as we have it in Canada today. Would you confirm that?

MR. ESTEY: We are quite proud of the fact that we have been able to adapt ourselves to a situation which we really cannot honestly believe in; but they do get along. Apparently, this acceptance of programmes is at least in good grace. There is no continuing war about the programming. There are lots of instances we could give, which do not prove anything, of differences of opinion between the operators, but I think I must agree with that statement.

THE CHAIRMAN: It would have been most interesting if you had told me there were not disagreements, because that would be most unhealthy.

MR. ESTEY: Yes. I don't want to appear to be denying the relationships are good, because they are good, particularly when we don't agree with the system.

THE CHAIRMAN: I am really not talking about the system; we have had plenty on that. I am really trying to get at the way things are working in the television field. When we were in Montreal I know a number of the private operators had to leave us in order to come down to a meeting concerning programming in television. How did that meeting go? Was it a successful meeting? Did you get somewhere with it?

MR. ESTEY: I think the meetings between the two are usually successful in the sense the Canadian interest is promoted and better programming comes from it, but those meetings are not really a meeting of equals.

THE CHAIRMAN: Well, for goodness sake, get the chip off your shoulder for a minute, and never mind coming back on every answer about the question of the system and meeting as equals. I am trying to find out whether this was a useful meeting in terms of getting better programmes and working together, and so on.

MR. HENDERSON: Perhaps it would be better, Mr. Chairman, to have someone who was at the meeting give the answer. Mr. Lynds was there.

MR. LYNDS: I was not at the meeting, Mr. Chairman, but I have been talking with some of the people who were there and they are extremely pleased with the way the meeting went and the fact that some of their suggestions were acted on.

MR. HENDERSON: Mr. Geoff. Stirling was there, and he is here today.

MR. STIRLING: Apart from any interpretation of the system, there is no doubt about it from the very beginning that every meeting we have been at we could not ask for better cooperation. They have played the game with us, and we have tried to do so with them.

THE CHAIRMAN: Thank you, Mr. Stirling. I was really just trying to confirm the impression I had that the relationships, whatever they were, were better in the television field than they seem to be in the radio field.

MR. LYNDS: I don't know; I have got along pretty well with them in the radio field. I don't always agree with them, but I think our

relations have been excellent.

THE CHAIRMAN: In the course of those discussions -- anything that comes out of it which will lead to a more cooperative attitude, and admittedly you say you would get a more cooperative attitude if you had a separate regulatory body, but maybe it is worth trying to get a good cooperative attitude whether you get that or not.

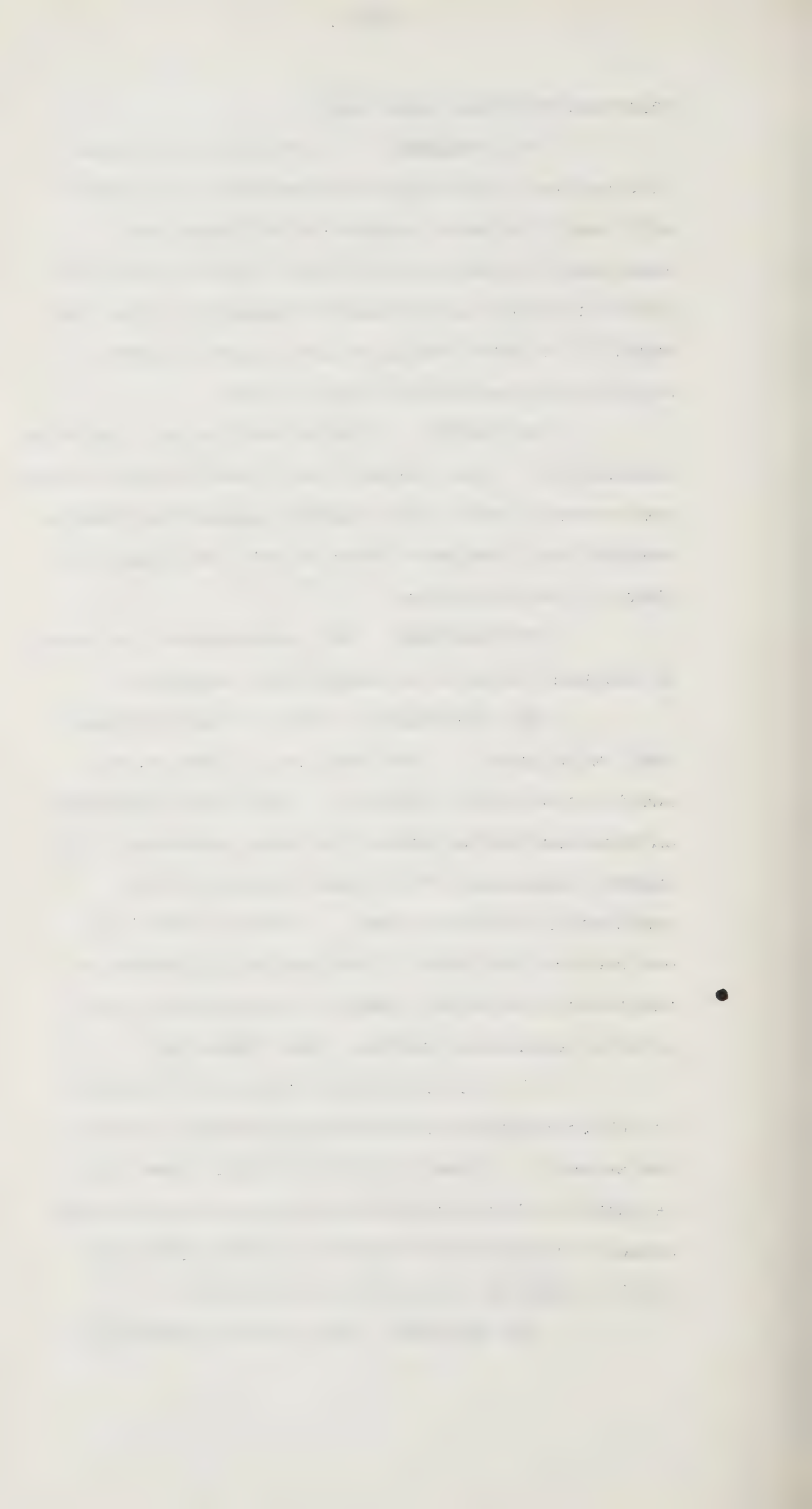
MR. ESTEY: I think that is why they have cooperated. Also, television is new to both parties, and naturally they would combine against the unknown whether they like each other or not, but apparently they do like each other.

THE CHAIRMAN: Mr. Henderson or Mr. Estey, do you want to go on to these other sections?

MR. HENDERSON: Some of them have been dealt with again. The next one is very short, and it is on Public Opinion. The Royal Commission on Broadcasting has heard from many spokesmen. It appears unnecessary to present a detailed re-examination of their views. Most of them took one side or the other of the continuing debate on the three fundamental issues of regulation, competitive television service, and financing.

It is difficult for any body of inquiry to get representations from the so-called "man in the street". Some indication of his views may be garnered from presentations such as those by the Canadian Federation of Mayors and Municipalities and the Canadian Association of Consumers.

THE CHAIRMAN: You are not suggesting



we should confine ourselves to that?

MR. HENDERSON: No, on the contrary; we rather say that probably the only true way is by referendum, and certainly from our point of view we have no objection.

THE CHAIRMAN: But is it not an odd thing that of all the great number of labour unions, farm organizations, home and school associations and so on, you just happened to pick out two of the ones which supported your view.

MR. HENDERSON: Yes, not the only two, I don't think so. There were the Chambers of Commerce as well. No, we are here saying as I apprehend it that we agree with the representation of the Canadian Congress of Labour in the right to represent labour on matters dealing with labour, but we question whether they can speak as authoritatively on questions dealing with broadcasting. We don't think that they do.

THE CHAIRMAN: Well you do seem to say that they cannot speak at all on the matter, authoritatively or otherwise.

MR. HENDERSON: We will come to that. I don't think we say that they cannot speak at all. Anybody has a voice, but whether or not you accept it as authoritative is something else -- that is another matter.

MR. HENDERSON: Generally, spokesmen who have appeared before the Commission fall into these major categories: (a) Those who favour a maximum degree of Government intervention and control as a matter of basic principle in general, not just in broadcasting. These opposed our views and supported the present regulatory system.

(b) Those who want as a matter of principle a maximum degree of freedom and development for any citizen or business within the general law as well as in broadcasting only. These supported our views.

(c) Groups with a special or direct interest in the issues before the Royal Commission on Broadcasting such as this association and the Canadian Broadcasting Corporation. Groups such as the Canadian Federation of Agriculture and the Canadian Labour Congress also fall into this category because of the generous donations of network time made them by the Canadian Broadcasting Corporation. Similar donations from private broadcasters are impossible because of the effective prohibition against network.

In other words we don't think that the public has confidence in the dual relationship.

THE CHAIRMAN: Just before you leave that point (c) Mr. Henderson, don't you think that you have an illogical sour lemon here -- a moment ago you said you didn't regard the Canadian Labour Congress as being able to speak for labour on questions of broadcasting?

MR. HENDERSON: Sure.

THE CHAIRMAN: And now you say that they are a group with a special or direct interest in the issues before this Royal Commission on broadcasting and surely any group with a special or direct

interest in the issues before the Royal Commission on Broadcasting would have a right to speak, would they not.

MR. HENDERSON: It depends on your point of view. Certainly, we say this that in broadcasting matters an individual member of a labour union should have, and we feel it does have the right, however we have brought to the attention of the Commission a different or divergent view from those who control the Canadian Labour Congress and we are saying that the Canadian Labour Congress has had an opportunity to do this and those who are in control of the Canadian Labour Congress have had the advantage of appearing on the CBC to express their views and that this has been done and could not help but have conditioned their thinking in regard to their presentation of their brief. Now there are two different concepts. One is whether the executive in the presentation which has been made, is representing the group at large. Whether it represents the views of the group at large or its own views, and we think that it is consistent to say in both cases they are representing their own views and not necessarily the views of the group at large. We also say their own views could have been conditioned by the fact that they have had the opportunity to appear on the CBC. Now we don't

say that this is wrong. We are not saying that you should not be given that opportunity. We say the fact is that it had it. We say that the fact that they had it may have conditioned the disposition which they had toward the case which they made, or the point of view that they espoused. That is our point.

THE CHAIRMAN: Well now let me get this. You are not talking about just an appearance. That is not what you are saying. You say because of the generous donations of network time made to them, and that is to the Canadian Congress of Labour, the Canadian Federation of Agriculture -- that is what you say -- and I have checked with the CBC and I will check again when they are before us, but the preliminary information I have got is that there is no donation of time either to the Canadian Federation of Agriculture or to the Canadian Labour Congress -- no donations of network time. Now, if you are talking about appearances on panels such as we have had, if that is what is meant, I do not think that is a correct way to express it.

MR. HENDERSON: That is one of the things which was meant.

THE CHAIRMAN: What else is meant?

MR. HENDERSON: I am instructed that in a brief of the Saskatchewan Federation of Labour, which is Exhibit 63, that the Saskatchewan Federation of Labour requested a reinstatement of

the CBC's labour forum which labour forum is, as I understand it, a labour broadcast which was donated to a labour group.

I think that that is an example of a donation.

THE CHAIRMAN: Oh -- don't -- --

MR. HENDERSON: And the request has been made to reinstate it.

THE CHAIRMAN: Oh that is not what you are saying -- and that is what irritates me -- I am sorry.

MR. HENDERSON: Well, I am sorry too.

THE CHAIRMAN: You are talking about a farm forum which is not in existence.

MR. HENDERSON: Well the farm forum and the labour forum -- I was going to equate it with the farm forum.

THE CHAIRMAN: The farm forum is not in existence. If you had said because of the farm forum we would expect the Canadian Federation of Agriculture to favour the CBC, but you don't say that. You say groups such as the Canadian Federation of Agriculture, the Canadian Labour Congress and so on fall in this category because of the generous donation of network time made them by the Canadian Broadcasting Corporation, and I say it is not only an inaccurate but an irresponsible statement.

MR. HENDERSON: Well, you are looking at it directly and we were looking at it indirectly and I submit that that is a statement

of a point of view -- they do get it indirectly.

THE CHAIRMAN: In what sense does the Canadian Federation of Agriculture get anything indirectly from the farm forum?

MR. HENDERSON: Well, it is a programme.

THE CHAIRMAN: Which they may like.

MR. HENDERSON: Well, in their interest and I suspect it is run by them.

THE CHAIRMAN: Well, you are not saying are you that these organizations have been bought by these donations?

MR. HENDERSON: No. I think I made it very clear that we are not saying that there is anything improper about the CBC making it available to them, but the fact is that it was available to them.

THE CHAIRMAN: But it is not available to them of course, except in this most indirect way.

MR. HENDERSON: Well, that is a matter again, of opinion, how indirect it is, but it is indirectly available to them.

THE CHAIRMAN: And dealing with market quotations and dealing with desirable agricultural practices and so forth.

MR. HENDERSON: The instructions I have are that the national farm radio forum is a farm study group project initiated in 1939 under the triple sponsorship of the CBC, the Canadian Federation of Agriculture and the Canadian

Association for Adult Education, so, therefore, it is. CFA is one of the sponsors of the programme.

THE CHAIRMAN: Are you suggesting that they get benefit from it? I suppose they do get the benefit in the sense that the farmers are interested in getting some help, but, however, we are talking rather a long time on the subject, but I was wondering how you could say this disqualifies people or these organizations from having a voice.

MR. HENDERSON: This is not an attempt to disqualify them at all. We are just trying to bring the fact to your attention, not having regard to the weight that is to be given to it. We are not saying it is not admissible. We are drawing these facts to your attention in assessing its weight.

THE CHAIRMAN: Well, I guess you probably have gathered that it has not been helpful to me as an argument.

MR. de GRANDPRE: But in the same manner, Mr. Henderson, with these labour forums, it has been the practice of the corporation to have management represented on the other side for the discussion, so, should we give more weight to the Chambers of Commerce or less weight to the Chambers of Commerce, in the same way that we would give more or less weight to the Canadian Labour Congress or to your own brief in this matter?

MR. HENDERSON: Well, we have put ourselves in the position, we classify ourselves as having an interest in the result and that you will consider that when you are considering our evidence. We do not deny that and if you feel there are others who have an interest in the position they are espousing you will weigh it accordingly. We merely draw attention to the fact this may have conditioned the position they took and which position we have earlier urged is at variance with the position of the majority of those who compose the group, that is in the case of the CBC

THE CHAIRMAN: I am afraid I interrupted you, Mr. Henderson.

MR. HENDERSON: Yes, I am now at D: groups or individuals representing the Arts or Letters. In the main such spokesmen dealt more largely with programme issues and these, while important, should not be confused with the basic issues of regulatory structure, competitive television or financing.

The Commission also received a number of letters from individuals. It is significant that the majority of these articulate and outspoken Canadians favoured the same principles as does this association. We say "majority", I think that was done on a count, we made a count.

COMMISSIONER STEWART: How did you get access to the files of the Commission?

MR. HENDERSON: I understand letters were

sent to Mr. Allard and he counted them up.

MR. ALLARD: The letters were released to us by the Commission.

MR. COYNE: It is a confusion of terms, you must mean briefs.

MR. HENDERSON: All I can do is count what I have and what I have we count in that way.

MR. COYNE: You are referring to briefs and you say letters.

MR. HENDERSON: This says "Letters from individuals".

THE CHAIRMAN: Mr. Pelletier, while you were out we had Section 5 read on page 27 which says:

"The Commission also received a number of letters from individuals. It is significant that the majority of these articulate and outspoken Canadians favoured the same principles as does this Association."

Mr. Stewart was asking how they had access to our correspondence, but apparently you did send over things which were taken to be briefs in the form of letters, is that right?

MR. PELLETIER: The odd one, by and large ; we have a lot of correspondence in the office, these remain in the office.

MR. HENDERSON: I hope they were not only from odd people because the majority of them are in our favour but, in any event, all I am saying is we

added up what we had and this is the result that showed. If there are others we do not know.

MR. PELLETIER: There were a few briefs in the form of letters.

THE CHAIRMAN: These went along with the other briefs that came in in the form of briefs?

MR. PELLETIER: That is right.

COMMISSIONER TURCOTTE: It is amusing you receive so many letters at the request of Mr. So and So the manager of station so and so and I am writing to you to say how much --

MR. HENDERSON; You will weigh that accordingly.

MR. LYND: At least they wrote.

MR. HENDERSON: We believe that many groups who appeared before this Commission did not speak for their membership on broadcasting issues. Reference to the Commission's transcript and records will show that:

(a) It was determined in certain cases that actual membership was considerably less than that implied in the brief submitted;

(b) In other cases it was established that the brief had not been seen by membership prior to presentation --

THE CHAIRMAN: This would apply to your own?

MR. HENDERSON: We did not have the opportunity but we do show this within the policy resolution that was adopted.

THE CHAIRMAN: That is what others have said too.

MR. HENDERSON: I might say they have now had it for several days and we have not had any dissent put to the Commission.

(c) In some cases individuals or groups were listed as supporting the views outlined in a brief, but later reported to the Commission they had not seen the brief or that they did not agree with the views in it.

7. Many organizations appearing did not present policy resolutions from membership authorizing a certain viewpoint on broadcasting. It has been the practice throughout the years for many groups to appear before any public inquiry dealing with broadcasting and present views based on the general principle of maximum state intervention and control. We believe that in all such cases it should be established by cross-examination whether or not the groups' views on broadcasting have been submitted to or approved by the claimed membership.

We are not talking about this specific Commission because it has been done.

THE CHAIRMAN: You have no objection to the cross-examination by this Commission?

MR. HENDERSON: No, indeed, I enjoy it. There are specific groups that seem to grow out of the blue whenever a Commission is appointed and we merely suggest that cross-examination be entered into to determine the nature of the organization as

has been done by this Commission.

Virtually every presentation dealing with the major issues recognized there is something wrong with the present regulatory system and that it lacks public confidence. Even some of the briefs which opposed a separate regulatory body recognized these facts by suggesting many kinds of changes, usually impractical, such as representation of private stations on the Board of Governors, reporting by the station regulations division of the Corporation directly to the Board right up to and including a right of appeal from decisions of the Corporation Board. In no case was it demonstrated that a separate regulatory body would injure the activities of the Canadian Broadcasting Corporation or prevent any State broadcasting agency from operating an effective national service.

It is clear that the issues before this Commission are not related only to broadcasting. They are also related to fundamental issues affecting the whole structure of our society. The great majority of the people who opposed a separate regulatory board indicated their opposition as a matter of dogma and principle applicable to all functions of society. Those who support the principle of a separate regulatory board include such organizations as the Canadian Association of Consumers, the Canadian Chamber of Commerce, the I.O.D.E., the Manitoba Branch of the Canadian Legion, the Junior Chamber of Commerce of the

Province of Quebec and like responsible organizations and individuals.

THE CHAIRMAN: Has anybody any questions?

MR. deGRANDPRE: I think we asked all the questions as we went along, Mr. Chairman, yesterday and today.

MR. HENDERSON: As an expression of opinion we have a resolution favouring a separate regulatory body which was passed by the Manitoba Legislative Assembly, I understand on March 6 of this year.

COMMISSIONER STEWART: That came in before us when we were in Winnipeg.

MR. HENDERSON: That has been read in?

COMMISSIONER STEWART: Yes, Mr. St. John, one of the local members read that into the record.

MR. HENDERSON: Yes, in support of our position it is interesting to know how that divided, I do not know whether the division was given to you?

COMMISSIONER STEWART: Yes, 47 to 6, I think, something like that.

MR. HENDERSON: And it was only the C.C.F. members that were against it.

COMMISSIONER STEWART: Yes.

THE CHAIRMAN: I have only one comment really to make, I do not think that we have time to go into the first sentence on page 28 of your brief which says, "Virtually every presentation dealing with the major issues recognized there is something wrong with the present regulatory

system and that it lacks public confidence." I would only say that is not my impression that every presentation, people have made their issues, I do not think it is a fair statement of the evidence we have had and I only mention that opinion because I would not want you to use this statement later as having not been challenged by the Commission.

MR. HENDERSON: We have in mind that even the CBC did recommend some kind of change and so did the UBC.

THE CHAIRMAN: You will often find a situation where they would say, "Well, maybe you could do a little better than you are doing but we like what is there", but that hardly means saying something is wrong with the present system, that it lacks public confidence. I think that would be very hard to read into the briefs you are talking about but I just do not want you to take that statement as not having been challenged and be able to refer to it later because I do challenge it.

MR. COYNE: I wonder if I might ask one question before we leave this? On the last paragraph on page 28 you state:

"The great majority of people who opposed a separate regulatory board indicated their opposition as a matter of dogma and principle applicable to all functions of society."

I would like Mr. Henderson to be a little more specific as to who he includes in the great majority of the people and I put it to him this way, I suggest that it has been quite remarkable in the body of evidence that has come before this Commission that there has been an almost universal lack of dogma in this sense and very few, if any people have recommended a wholly nationalized system or a wholly private system. In fact, I think the great majority of the people he is talking about are people who approve the existing system of some public enterprise and some private enterprise. Now, in what respect do you say that they oppose this board as a matter of dogma and principle applicable to all functions of society? Who are the great majority you are speaking of?

MR. HENDERSON: Well, those who are interposed in this phrase are those who are, by their very nature, wedded to a socialist society.

MR. COYNE: Oh come, come, Mr. Henderson.

MR. HENDERSON: That is the thought.

MR. COYNE: Well, will you tell me who you mean?

MR. HENDERSON: Well, I have not --

MR. COYNE: I beg your pardon for interrupting --

MR. HENDERSON: That is what was intended in this particular paragraph.

MR. COYNE: In other words, the great majority of the people you are speaking of who oppose this Board are socialists by dogma?

MR. HENDERSON: Yes.

MR. COYNE: Who are you referring to?

THE CHAIRMAN: If that is what this means, let us see how accurate it is, who do you mean?

MR. HENDERSON: First, the Radio and Television League.

THE CHAIRMAN: First of all, do you mean the London Radio Station, the operators of the station?

MR. HENDERSON: They did not oppose the separate regulatory body as we understand it.

MR. LYNDSEY: Mr. Brown said they were not opposed.

THE CHAIRMAN: I will get the brief and read it to you.

MR. COYNE: Why do we not take the Canadian Federation of Agriculture, that is an easy one to start with.

MR. HENDERSON: I will give you one at a time, in London, my understanding of the evidence given by the owner of that station was when asked that he did not oppose a separate regulatory body.

THE CHAIRMAN: He said he did not think it would be useful to recommend it but he may have said if you want to do it I am not going to object.

MR. LYNDSEY: I think you will find in the transcript that he said, "We are not opposed".

THE CHAIRMAN: He might have said it in those words but the point is, in his brief and he supported it in his evidence too, he definitely recommended against a separate regulatory

board as being unnecessary.

COMMISSIONER STEWART: I think the same could be said of the Halifax station, they wanted a slight change only in the Board of Governors which would cover the whole situation.

THE CHAIRMAN: We just wondered whether these were some of those socialistic characters who are opposed to a separate regulatory body.

MR. HENDERSON: I mentioned the Canadian Radio League.

THE CHAIRMAN: Let us take them, the Canadian Radio League, do you regard them as socialists?

MR. HENDERSON: Well, they were intended to be included in this sentence.

THE CHAIRMAN: As being socialists?

MR. HENDERSON: As a matter of principle their point of view was in that direction, yes.

THE CHAIRMAN: May I read to you who the officers are:

Dr. E. A. Corbett

Mr. Geoffery Andrew, Vancouver

Senator David A. Croll, Toronto

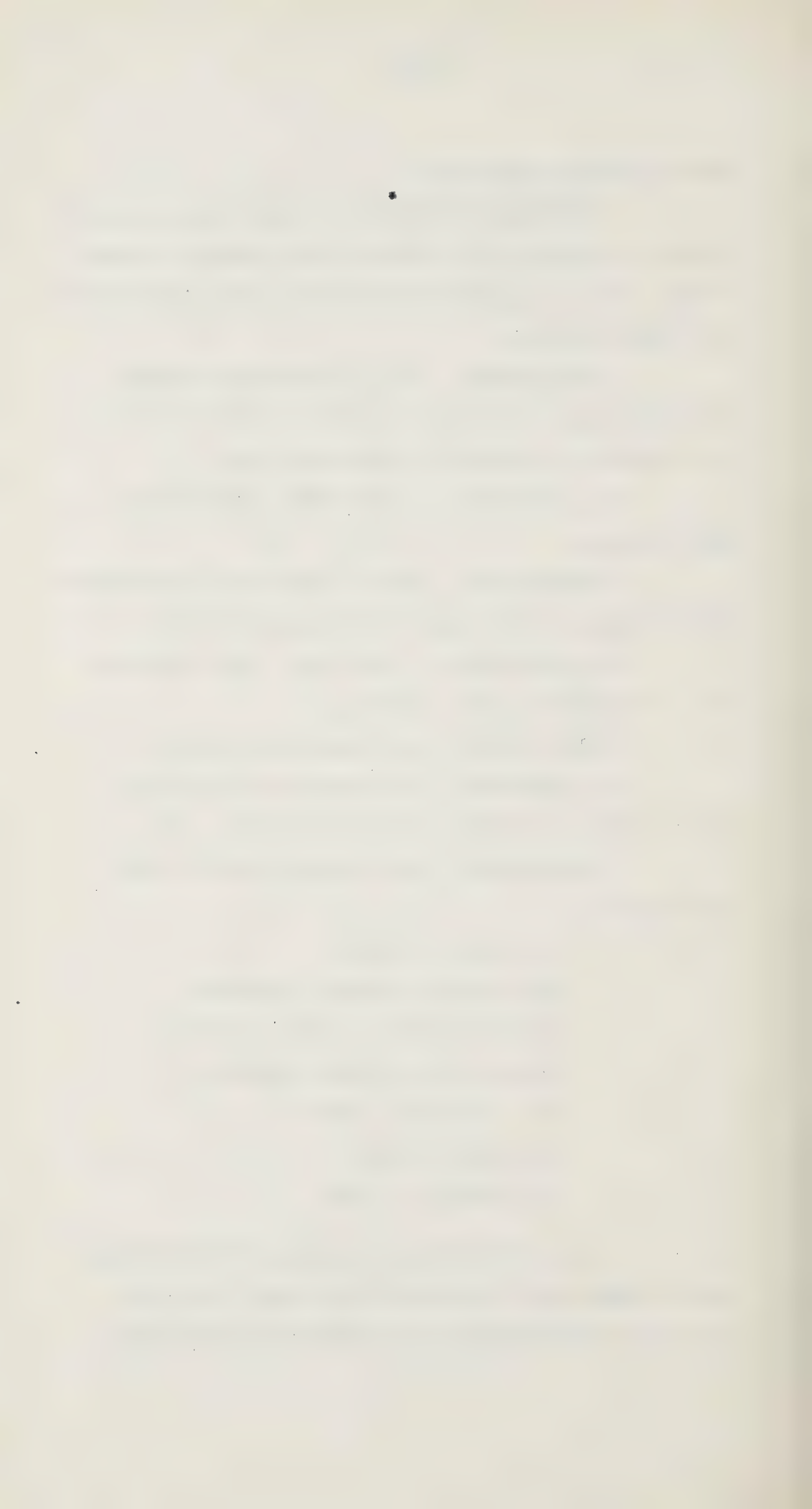
Prof. A.R.M. Lower, Kingston

Mr. Roy Grant, Moncton

Mrs. Edith Fowke

Mr. Albert A. Shea

I do not suppose we can pass on individuals but it does seem to me some of the names there you would have difficulty in classifying as socialistic.



MR. HENDERSON: I am instructed that membership does include those who adhere to that principle, yes, and I am instructed it was organized by those who also adhere to that principle.

MR. COYNE: Did the Canadian Radio and Television League recommend outright nationalization of the private stations?

MR. HENDERSON: No, I do not say they did.

MR. COYNE: You say you indicated their position as a matter of dogma.

MR. HENDERSON: As a matter of dogma applicable to other functions of society.

MR. COYNE: To all functions of society?

MR. HENDERSON: There is no statement here to say they did ask for complete nationalization but I am advised in the past they have taken that position. I am happy to see they have changed their views slightly.

MR. COYNE: I suppose it would follow from what you say, at least I would presume that consistently would you say all of the Members of Parliament who passed the Canadian Radio Broadcasting Act in 1932 or the Canadian Broadcasting Act in 1936 did so as a matter of socialistic dogma?

MR. HENDERSON: That is not included in this phrase.

MR. COYNE: I am asking you if it is not consistent with this phrase.

MR. HENDERSON: That is applicable to those

who appeared here and has nothing to do with others.

MR. COYNE: You have mentioned one group of people, the Radio Television League but you say the great majority.

MR. HENDERSON: Let us go to another, the substantial operation of the CLC adheres to the CCF party and a socialist point of view.

MR. COYNE: You have just said the CLC brief only represented the executive of the CLC, is the executive of the CLC propounding a socialist doctrine in their brief to this Commission and if so, why did they not recommend nationalization?

MR. HENDERSON: You would have to ask them.

MR. ESTEY: The same reason they changed their manifesto.

MR. COYNE: Which manifesto?

MR. ESTEY: The Regina manifesto now called the Winnipeg manifesto. They have a political action committee which is dedicated to the C.C.F., they passed a resolution.

MR. COYNE: You have mentioned two, have you got any others?

MR. HENDERSON: If you wish us to do so we will go through the list and file them with you.

THE CHAIRMAN: No, no. If you have them let us have them now and if you haven't why don't you abandon the suggestion.

MR. HENDERSON: The Winnipeg Labour Council brief, and I am advised that Mr. Jolliffe presented that on behalf of NABET.

THE CHAIRMAN: You don't regard that as being in with this?

MR. HENDERSON: When this was written I believe the CFA was contemplated at that time. Yes. At the time this was written, I believe the CFA was included.. The CFA brief was considered to be within this range.

THE CHAIRMAN: Let us leave it there.

As we have stated, we are in agreement with the premise that broadcasting is a public trust and as such we agree that some form of regulation is necessary. We have also expressed our belief in the continuance of the present method of co-ordination of public and private facilities under one responsibility to Parliament. Since we agree as well that the emphasis on Canadian values must be a part of Canadian broadcasting, it seems to us that there must be some authority to ensure that the proper emphasis is maintained within the national system. If, as has been proposed, a separate regulatory body were to be set up, it would be

necessary for this body to either exercise the necessary authority or transfer such powers back to the CBC. In our opinion, the creation of a separate regulatory body would seem to be impractical and would duplicate the present system of national control.

They are not the most satisfactory words, I would say, against a separate regulatory board.

MR. HENDERSON: As I said earlier, our recollection is they were treated somewhat from that during the course of the questioning.

THE CHAIRMAN: That is not my recollection.

MR. HENDERSON: I was not there. I am only giving you my instructions that that was the position at the time of the hearing.

THE CHAIRMAN: It is not an important thing. If I may just say so, I think you make a mistake questioning it so far. What about this next. I think you might get started on the network.

MR. HENDERSON: Some of it has been questioned and I think, perhaps, we can go through it relatively quickly.

MR. ESTEY: I don't think it is necessary to read the network section. We worked through that, I think. The advertising section which is in here, we don't try to restate what the advertising association has said, but, again, it lays the background to our belief that commercial radio is partly, not only acceptable but desirable

and we lay that out in six paragraphs. There are all these illustrations to that argument. I don't want it to appear that I am pressing the values of spot announcing as cultural advantages to the Canadian community but what we are saying is that advertising has its place in broadcasting just as it has its place in other industries.

COMMISSIONER STEWART: Before you get past that paragraph 4, you say it is significantly unusual that broadcasting should be singled out and denied the revenues to be derived from the natural use of this new facility for purveying commercial information. The word denied is a strong word, and, in fact, is it correctly used? It has not been denied.

MR. ESTEY: If I understand your reading of it, then I agree it is not the right word, but if I understand another reading then, perhaps, it is. I suppose what it means is a partial denial.

COMMISSIONER STEWART: What you mean is singled out and restricted. You would like to make more revenue but are restricted.

MR. ESTEY: Prosperity is not the test of the propriety of an industry. Some of them are more prosperous than others. This is a very prosperous era, and this is not a unique case. Surely, from the background of private industry it would give better service.

THE CHAIRMAN: When you are talking about denial and restriction you cannot talk about what the results might have been but if the results are pretty good you might say the restrictions had not been too

severe.

MR. ESTEY: I would like to get off into a side argument where I could lose and still win. I was going to mention paragraph 5. The Canadian public wants to advertise and want to look at and listen to advertising material. That cannot be taken as 100 per cent true. The fact remains, however, when you make a survey what do they look at, they are looking at advertising programmes. They may develop a reflex action and when the advertising comes on they do not see it.

THE CHAIRMAN: There was a little device mentioned about clipping out the advertising message.

MR. ESTEY: The electronic age knows no bounds.

THE CHAIRMAN: Your statement about the Canadian public wants to advertise and wants to look at advertising material, I take it you are not relying too heavily on that.

MR. ESTEY: I am not here to defend some jingle and to say that the people are just waiting for that to come on but I do say when you make a survey you find they are looking at commercial stations.

THE CHAIRMAN: Before you leave the advertising section, if you are through, I would like to ask you one question about a phrase in Section 6. You say, for some reason a limitation of advertising is required in the case of broadcasting. Without necessarily admitting the validity of this argument it should be

pointed out -- etc. I understood you earlier to admit the validity of this argument.

MR. ESTEY: Perhaps I have been over-cautious there but here is the idea we are trying to get at. Public discipline affects to a certain extent the amount of advertising apart from Government regulation. There is a natural built-in discipline -- I retract that, I don't want to use the word built-in -- there is a natural discipline itself. We don't say that discipline would be sufficient but that is without the validity.

THE CHAIRMAN: You could take this phrase here, you are not really admitting the validity of the argument that there should be limitation of advertising, but I take it you think there should be something perhaps not too severe.

MR. ESTEY: I don't want to support that in all its variances. We realize there are two disciplines and they are both necessary.

Now, financing. I read from page 31.

We believe that vital basic principles require that any organization financed by the voters should be fully responsible, should be in the full control of the proper elected representatives, and be required to make full public disclosures of how it handles the taxpayers' money.

COMMISSIONER STEWART: The emphasis being on the last sentence that you read.

MR. ESTEY: Yes.

Justified concern has recently been expressed in many democratic countries over the decreasing power of the people's elected representatives in Parliament or like bodies and the passing of such power first, into the hands of the Executive, and latterly, into the hands of government managers. This latter tendency may indeed be creating without particularly conscious intent or design a new form of non-representative government. At minimum the tendency makes it imperative to explore every possible avenue of maintaining and strengthening representative or self-government and of safeguarding individual liberties and freedom against a powerful unrepresentative and unresponsive State machine.

The trend to non-representative government warrants in any field the serious attention of all those interested in the maintenance of freedom and the safeguarding of individual liberties from the powerful machinery of State. The factor becomes doubly important in the case of a Crown corporation, a non-representative organization, concerned with the communication of news and information as well as entertainment. In this connection, it should never be overlooked that entertainment has often been and remains one of the most powerful vehicles for conveying ideas, setting standards and altering attitudes. Some of the greatest plays and novels of history have also been powerful weapons of propaganda.

It is said that the Canadian Broadcasting Corporation is directly responsible to Parliament. Whatever the theory or the narrowly legalistic interpretation may be, it is in fact impossible for a representative body such as Parliament to control let alone supervise a large and far flung organization of this type. We quote from a feature article written by Mr. Elmore Philpott, a Liberal Member of the House of Commons, appearing in the Prince Rupert Daily News of May 9, 1956, and I quote:

"Parliament is supposed to run the CBC and the CBC is supposed to be directly responsible to Parliament. This is a ridiculous and hypocritical conception and indeed an impossible conception which perverts our whole basis of responsible government in Canada. It is physically impossible for the CBC to be responsible to the whole Parliament of Canada for the obvious reason that the Parliament of Canada has no way of exerting its control over the CBC except through the government of the day and the Board of Governors of the CBC. That fiction that the CBC is 'directly responsible' to Parliament has been more than anything else responsible for the deadlock

"muddle into which radio and TV have sunk in Canada. Because everybody is supposed to be running the CBC, that is everybody in Parliament, nobody is actually running the CBC. That is, nobody outside the CBC itself..."

We make reference there to our earlier filing of Submission No. 14 and also reference to the Parliamentary report where one Parliamentary Member asked for information about the CBC and the Minister said, we won't give you that information because that is not the policy in respect of Crown corporations.

THE CHAIRMAN: You realize we are not debating the rules of legal evidence here. I must say this way of proving a thing is not satisfactory. The man who made this statement is not available to be questioned about it, and we had a good deal of evidence that Parliament does run the CBC and controls it very carefully and I think you in your brief relied quite heavily on Parliamentary committees having gone exhaustively into this. If you talk about Parliament managing and controlling the programmes that will be on next Tuesday night, then you are right, but there has been a great deal of evidence that Parliament has exercised a very close continuing interest and supervision in matters affecting broadcasting

in Canada which this whole series of Parliamentary committees seems to show. I find it hard to attach a great deal of importance to this in the face of this evidence.

MR. ESTEY: We find it very hard to understand why the CBC in its brief makes so much out of this responsibility to Parliament because I think everybody in Canada knows that it is represented in Parliament through the Minister. I don't ~~think~~ think this is a big subject for argument. It was raised by the CBC and we are a little mystified as to what the significance is.

THE CHAIRMAN: You may have some comments on it and I may not have it clear in my mind but it seems to me what they were saying was the arrangements whereby the CBC responded directly to parliament through a Minister who spoke for them, because you have to have somebody speak for you and you did not have the direct department relationship with the CBC. A suggestion was made by them and by a number of other people that for a subject such as broadcasting a very desirable method would be to have it done by departmental control on the theory that broadcasting, dealing as it does with so many people, it was better to do whatever you could to intervene between the government of the day and the CBC. Now, I think, that is all that they were saying.

MR. ESTEY: I wondered if they meant the Act should be changed which requires the tabling of a report? I suppose not.

THE CHAIRMAN: No, I think they were simply saying, "Here you are trying to run a Crown Corporation dealing with broadcasting and we want to get political interference out to the maximum extent possible," and in those circumstances you have got two methods; one to make a report direct to Parliament, and the other to make its report through a department of Government, and we think it may be better to do it through Parliament".

MR. ESTEY: I take it from that they want to continue the present situation.

THE CHAIRMAN: That is certainly the suggestion I have taken from it.

MR. ESTEY: Like our sentences, some of theirs are not clear, and if it meant a change from that, we, as any Canadian citizen would, would take violent exception.

THE CHAIRMAN: I certainly took it that in the broader interests this was better for the country and perhaps would avoid a suspicion of political interference.

COMMISSIONER STEWART: I think the Terms of Reference of this Commission are such as to confirm that view because one of the statements in the Preamble is that reconsideration of television broadcasting should be based upon the principles that the grant of the exclusive use of certain frequencies and channels for broadcasting shall continue to be under the control of the

Parliament of Canada.

MR. ESTEY: Yes.

COMMISSIONER STEWART: So, that is quite clear there. Now, they don't say "under Government"; they say "under the Parliament of Canada".

MR. ESTEY: There is another section which I cannot put my hand on now where it seems to imply they would like to get a little further away from the Parliament of Canada -- perhaps I should not say that -- but further away from the control, and our only point is that under the present system we get the fruits of the inquiries of the broadcasting committees, and if we had less than that I think it would be a dangerous situation. I think I am coming to a reference on that. It is in paragraph 5:

"But the Corporation is not satisfied with the situation in which it has the appearance of being responsible to Parliament without actually being so."

THE CHAIRMAN: Do you want to retain that sentence in your brief?

MR. ESTEY: I think it has to be read with what now qualifies it:

"In its brief to this Commission the Corporation complains about investigation by parliamentary committees and two Royal Commissions."

Then on page 63 of its brief, it suggests a lessening of executive control, saying:

"There is also the matter of the

approval by the Governor in Council needed under the Canadian Broadcasting Act for commitments by the Corporation of amounts over \$25,000. In television a great many items involve more than \$25,000. The obtaining of Governor in Council approval for many of these, which simply evolve out of the usual operations of the Corporation, often involves considerable delay and explanation to officials who do not share the responsibilities of the Corporation or have special knowledge of broadcasting. The Corporation suggests nothing against the principle of Government approval for commitments or purchases which are actually large under present-day conditions, but suggests that consideration might be given to these provisions in the light of television development and in the interests of despatch and efficiency."

(c) It then goes on to suggest its financing should not be subject to the normal system of annual parliamentary vote and submission of estimates to Parliament each year, saying on page 60:

"Under our system of parliamentary government, yearly grants would mean the submission of estimates to Parliament each year. Such estimates are decided on and proposed to Parliament by the

Government of the day which takes responsibility for them. As is the case with Government departments, the Cabinet would be taking responsibility for these estimates and presumably for how the money was spent. With such direct responsibility inevitably would come some control over the broadcasting activities of the Corporation and in implication if not in fact control over programmes and of their content. There obviously should be no such possibility provided for partisan influence or pressure if it is desired to maintain the principle of safeguarding broadcasting from political control."

These objections constitute a case made by the Corporation against the system of normal ministerial responsibility otherwise universally accepted under a parliamentary system. The Corporation would then be in a position where it is responsible to neither Parliament nor Government.

THE CHAIRMAN: Before you go on, I don't think all this that has been read does qualify the opening sentence, which I asked you about, whether you wanted to retain it or not; it says:

"The Corporation is not satisfied with the situation in which it has the appearance of being responsible to Parliament without actually being so."

Now, is CARTB alleging as a fact that the CBC has the appearance of being responsible to Parliament without actually being so?

MR. ESTEY: Mr. Chairman, we are saying that they are responsible to Parliament through the executive, and the CBC, in fact, is admitting that by explaining the financial procedure whereby their budget is approved. They keep saying they are responsible to Parliament, but the Act says they make their report to the Minister, and they admit their financing goes to the Cabinet.

THE CHAIRMAN: Well, under our system it has to.

MR. ESTEY: Certainly, and that is our case.

THE CHAIRMAN: But that is not what I am saying, and I don't want to quibble about it. What I am really getting at with these numerous statements, is that this can be bandied about where there is not a chance to question or deal with that. I think they can lead to a lot of public misunderstanding, they can be used as propaganda media -- for purposes of propaganda, and have so been used, and I don't like to let them pass. You are making the statement here that a situation in which the Corporation has the appearance of being responsible to Parliament without actually being so, and that is not the same as saying without actually being responsible through an elected Minister of the Crown, or any other qualification.

MR. ESTEY: Mr. Chairman, in Mr. Philpott's article, to take The Star article, he says that that fiction that the CBC has been directly responsible to Parliament has been more responsible . . . and so on. There is an illustration that the Corporation has been saying it is directly responsible to Parliament, and we say that is not so. They are responsible to Parliament, as everybody in the Government employ is, but it is through the Executive, and we want that to continue, and we don't want them to be making these loose statements that they are responsible to Parliament, because they are not, and it is not physically possible. It is a denial of our parliamentary system that anyone should be responsible except through the Executive Department, and that is what we mean in that sentence.

THE CHAIRMAN: I think there is only one other thing in this, and it may not matter very much, but you say in its brief to this Commission the Corporation complains about investigation. I don't think that is accurate. I think they point to the fact that investigations have been going on, and they pointed to the fact it took a lot of time and caused a considerable amount of expense. I don't think they raised it as a complaint.

MR. HENDERSON: Well in that case, Mr. Chairman, I find it difficult to understand in what sense they would raise it.

THE CHAIRMAN: On the amount of cost;

they said, "You should know this as one of the facts when you are dealing with ~~tests~~."

COMMISSIONER STEWART: You quote from the CBC brief at the top of page 34 on the question of annual grants, and you take exception, or criticize rather, their stand there. Earlier in the day mention was made of the place that should, and, in fact, does exist in the operations of the CBC, largely on the basis of the numerous locations that they have in various places. If you are going to have a satisfactory and economically run operation of this nature, it seems to me they have got to go into long-term planning, otherwise you are going to get that very situation which now exists -- that is, numerous locations and one thing and another like that -- a patchwork development rather than long-term planning.

MR. ESTEY: Unquestionably that is correct.

COMMISSIONER STEWART: So, I just wondered if you wanted to add anything further to that in the light of what I said.

MR. ESTEY: Yes, sir, I agree absolutely that any corporation, no matter who owns it, has to be successful in gauging long-term planning. If a Crown corporation could not so engage in long-term planning, then we would not be able to have Crown corporations doing anything in the nature of business. What we are saying is that this Crown Corporation is no different from the other Crown corporations who are subject to annual grants and

who do engage in the long-term planning. I have a quotation from The Toronto Globe and Mail of October 3rd, from Winnipeg, about the Canadian National, which says:

"Canadian National Railways will spend nearly \$1 billion on technical improvements in the next ten years, S. W. Fairweather, vice-president of research and development, said here. He said the improvements would mean a two per cent increase in efficiency."

He goes on ---

COMMISSIONER STEWART: Yes, but you are talking about a vastly different thing as far as the C.N.R. is concerned, because it is a profit-making body and they can go into long-term planning through, first, the profits they make, and secondly, through their ability to borrow on the open market. Here you are dealing with a different corporation entirely.

MR. ESTEY: Yes, there is no question about that. I have another example, but before I leave the C.N.R., the C.N.R. is a profit-making organization in the sense that that is our hope, but the realities haven't shown that very often. In the C.N.R. Act there is machinery set up whereby the Crown Corporation asks the Cabinet to ask Parliament for its deficit, but they are still able to conduct long-range planning. They have the physical plant which enables them to go to market on the same basis as someone else with a Government

guarantee.

THE CHAIRMAN: Are there annual grants to the C.N.R.?

COMMISSIONER STEWART: Well, there haven't been, fortunately, too many deficits over the last fifteen years in the C.N.R. operations.

MR. ESTEY: That is right. I recall in one of the railway commissions the statement that the C.N.R. was getting from the Parliament of Canada \$1 million a week, but still during that time they went into long-term planning.

THE CHAIRMAN: Are there long-term statutory grants --- I may be wrong.

MR. ESTEY: Let me take a better example, to get away from the question of whether it is a commercial undertaking. Look at the Department of National Defence: it is a strictly deficit operation and has no revenue except what Parliament gives it. There we have long-term planning, and very expensive long-term planning, but still every year it must come to Parliament to get its money, and, of course, Parliament itself is on a one-year basis.

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MR. COMMISSIONER STEWART: Yes.

MR. HENDERSON: There is one other factor which I think has to be considered, I understand from the CBC brief that there was a long term plan. This is a mystery to us because we have never seen it. However, there was a 1952 plan which they speak of in many cases in their brief. I don't know whether that plan has ever been made public or not. However, surely, if they had a plan and they had operated within the terms of that plan and there are grants then they have been able to some extent make their plans and operate.

MR. COYNE: Oh I don't think that the CBC has operated profitably on a grant except in this present fiscal year. They have had the revenue from the excise tax and the six and one quarter million dollars per year grant on a five-year basis.

MR. HENDERSON: Oh yes, I am sorry -- that is right. However, my point was rather that there was some plan that was in existence in respect of which they are conducting their operations.

THE CHAIRMAN: Well I think this is really quibbling over words here.

It may not make much difference whether there is an annual vote or a statutory grant vote. I think probably what the CBC was saying in fact was that they need to have a plan -- a long term plan -- because they need to know something of the future arrangements which they

are going to have -- in other words financing has to be set up on some kind of recognized basis. I think that that was all there was that was meant in these short term votes and so on.

MR. ESTEY: Well, I agree with that, Mr. Chairman, insofar as there can be over-emphasis on this point, but the point we are trying to make is that we want the CBC, just like the executive of the Government of Canada, to come every year and account. We don't just want to change the policy -- we got King John into trouble in 1215.

THE CHAIRMAN: Is this question on the private broadcasters act a matter which is non bono publico or is it more or less gratuitously giving us this advice, or something on which you have got a certain amount of direct interest?

MR. ESTEY: We are not going to send you a bill, sir. We are *amicus curiae* here, I think. We are saying that private broadcasting will go on whether it is a problem of political science, or whatever it is.

THE CHAIRMAN: Well, of course you would not be the first people who have done this -- I just wanted to know whether this represents any particular interest of the private broadcasters or whether it is just a case of being a good citizen or whether you merely wanted to clip the wings of the CBC -- I wasn't sure which it was.

MR. ESTEY: Well, we don't want to clip their wings. As a matter of fact, it has been suggested that some of us are riding on their back anyway.

THE CHAIRMAN: You are getting yourself into a very difficult subject there.

MR. ESTEY: Well, anyway we don't want to clip the wings of the CBC. It has been said that they are making an awful lot of money and if this is so we would like to have some information -- we are paying an awful lot of taxes and we want to know where it is going.

THE CHAIRMAN: Well, we have an indirect or certain interest in it.

I think that we had better adjourn at this point until 2:30.

Hearing adjourned
to 2:30.

---The Commission resumed at 2.30 p.m.

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THE CHAIRMAN: Well, Mr. Estey, I think you were dealing with the finance section beginning on page 31 and up to pages 33 or 34; you were on those pages.

MR. ESTEY: Yes, sir, I was about to read paragraph No. 6.

Presumably the Corporation in mentioning political control refers to either improper interference on political grounds or the threat of such interference. Unless illustrations can be given of actual political interference we must assume that it is the theoretical threat of such interference which worries the Corporation. Yet the Corporation seems unable to understand the fear of private broadcasters about the threat of interference from its combination of regulatory and operational functions.

7. We submit that no organization in the state, either public or private, should be free from political control. By that we mean the proper degree of administration or regulation by an appropriate division of the government of Canada or a province. Unrestricted power inevitably leads to abusive power. Good men do not guarantee good institutions nor is there any guarantee that any institution, no matter how good, will permanently remain in the hands of good men. One of the important principles of responsible

government is rule of law, not of men.

Now, sir, as we indicated yesterday and today, a number of these subjects have been dealt with under other labels and at other times, and to avoid useless repetition I propose to omit the reading of some parts of our brief. I would like to direct the attention of the Commission to paragraph 15 on page 41.

THE CHAIRMAN: Perhaps, then, before you leave the item on financing I did have one -- it is just a point that comes up at page 32 and also at page 34; at page 32, paragraph 2, you are talking about the decreasing power of the people's elected representatives, and in paragraph 3 the trend of non-representative government, and on page 34, in paragraph 7, you say:

"We submit that no organization
in the state, either public or private,
should be free from political control."

That is in a special sense of the word as you use it there. Did we not discuss yesterday, and I thought you agreed, that the proposed regulatory board which you are putting forward would be less directly responsible to Parliament and the people's elected representatives than the present CBC board, that it is more of a quasi-judicial body to which you would be handing over the responsibility for determining what a national broadcast policy ought to be. Now, how does that concrete proposal in your statute fit in with these comments about the decrease of the powers of the people's

representatives and the trend to non-representative government and so on?

MR. ESTEY: In several ways: first of all, the independent board would not be spending the money which we now see in the Estimates of the Crown Corporation. It would remain subject to parliamentary control, consequently there would be a right of appeal, which would be up to the Governor in Council on questions of fact. Thirdly, it would remain subject to parliamentary control just as freight rates in a sense are always subject to parliamentary investigation, as at the time of the investigation of the railway field done by Parliament on the off years when they have a Transportation Committee of the House. I do not see any distinction there between the difficulty of control possibly by Parliament with the independent board as distinct from the amount of control which they now can exercise when they so desire.

THE CHAIRMAN: Let me give you an illustration of what is bothering me; maybe it is not valid at all, but supposing you had this board in existence and supposing they had the responsibility, as I think you suggested, for determining what is a national broadcast service, which I think you said they should do; well, they are set up there as an independent board, suppose they decide to double the national broadcast service -- this board, I mean -- and presumably double its costs, then who wins? I mean, if they

put directions to the CBC and to private stations where need be to carry twice as much as the national broadcast service, this is their decision and they have made it, does parliament have to vote the money; of course, they do not have to, so that in effect Parliament would be able to control it in that way. Suppose the reverse took place and they decided to cut the national service in two, this is their decision, to cut it in two, to cut the costs in two, but Parliament has already voted more money. How does Parliament get them to step up the service to the level that Parliament wishes?

MR. ESTEY: I think the answer to that is the same as it is today; supposing the Board of Governors decided to cut the service in half, Parliament would have a direct avenue to the Corporation to make that change, and I think that is true of any creature, whether it be board or corporation -- it is omnipotent.

MR. HENDERSON: Does not it come back to the same place, if there is an appeal from the Board on fact to the Cabinet and an appeal in law to the court, and any appeal on fact gets back to the Cabinet, and you have there a determination of the factual question because surely the decision you speak of that that board is going to make will only be made if representations have been made to the CBC as to the amount of money available to it for the purpose of carrying on the function as the board directs. The decision will only be made in the light of the CBC representations as

available funds and available facilities.

THE CHAIRMAN: Are you suggesting in the case I mentioned the CBC would have the right of appeal to the Cabinet over the decision of this board?

MR. HENDERSON: On questions of fact it could be done just as exactly as in the case of the Transport Commissioners, that is set up, the Board of Transport Commissioners, the statute which governs them permits an appeal to the Cabinet on questions of fact and permits an appeal to the Exchequer Court on -- the Supreme Court of Canada on leave on jurisdiction in law. An application for leave to appeal may be made to the Supreme Court of Canada and ---

MR. ESTEY: I was going to document the matter a bit by reference to the TCA which comes under the Air Transport Board, and the Air Transport Board can enter into contracts with TCA to perform certain services, and it is quite possible Parliament would not give the money to run the service, so we have that right now in the air lines administration.

MR. COYNE: Mr. Estey, you mentioned drawing an analogy with the railways and the transport committees of the House from time to time to inquire into transportation policies. That inquiry, as I understand it, is directed to how the companies -- that is the C.N.R. and the C.P.R. -- are carrying on their transportation business in relation to the public interest in that field. Do they, as a regular matter, conduct an inquiry as to the ways in which the Transport Commission

does its business?

MR. ESTEY: The Act provides that the Board make its report to Parliament, and, secondly, when they pass amendments to the Railway Act, dealing with, well, the Maritime freight rate ---

MR. COYNE: Do what?

MR. ESTEY: Parliament intervenes and establishes a committee and by legislation fixes some specific rates for the Maritimes, and I think in 1947 they did the same on grain.

MR. COYNE: But they do not conduct a general inquiry into the Board of Transport Commissioners to see how they were conducting their business in the public interest?

MR. ESTEY: I think they had a problem in the western case on grain rates. Now, this is under the jurisdiction of the Board.

MR. COYNE: Subject to the ---

MR. ESTEY: Yes, subject to the whole Railway Act, which has a number of specific positive findings in it; Parliament added to those positive findings. Now, presumably that was done in the normal parliamentary way, and they were investigating the same field that the Board investigates, so whether they said they were investigating the Board or not, in fact they were covering the same field, so I take it that the answer to the question is that factually they did investigate the field of the Board of Transport Commissioners.

MR. COYNE: And you say in answer to the Chairman you would envisage this telecommunications

board would be inquired into by some committee of the House to determine whether they were carrying out their duties, interpreting the public interest?

MR. ESTEY: Yes, that is our contemplation of how it would work. I suggest other legislatures do that -- Congress is all the time investigating the Interstate Commission and the FCC, although they are creatures of Congress.

THE CHAIRMAN: You were moving on to ---

MR. ESTEY: To page 41, paragraph 15. There is a great deal of generality which at one time or another anyone who engages in this field feels necessary to assert. I would like now to crystallize our generalities, to get into a conflict of terms, but I do not want to go through it and drone through all the intervening pages. We think this expresses some of the atmosphere we are trying to convey.

The entire field of electronics, of which broadcasting is but a part, represents the most important advancement of our time. There is reason for believing we are entering an electronic age whose impact on our lives will be even greater than that of the automotive age. Full, free development of this vital and important industry in future will be stimulated and aided by a properly constituted tribunal with clearly defined duties and responsibilities, with no special interests of its own, dealing with all electronic matters.

THE CHAIRMAN: That is your summary of these preceding pages, but there are a few points on those pages I would like to ask you about. On page 35 you say at the middle of the page:

"We believe that basic principles of constitutional responsibility, financial sense and freedom of information can be protected best -- perhaps protected only -- by creation of the Canadian Telecommunications Board we advocate."

Now, I understood you were suggesting that the CBC should remain an operating body; you made some suggestions about the CBC not being wise in their financial arrangements. How would the basic principles of financial sense be protected in any way by the creation of the Canadian telecommunications board; it is not going to go under the management of the CBC, is it?

MR. ESTEY: No, we were expressing there a more fundamental view of economy, the fundamental suggestion is that the board would determine in the light of changing flow of circumstances, the extent to which private enterprise could be permitted to discharge the national broadcasting function without sacrificing public interest, and by that burden-shifting process thereby controlling the extent to which the public treasury is committed to provide new broadcast services. We think good financial sense would be served. It is that basic idea that we are there dwelling on.

THE CHAIRMAN: Well, I suppose it is a quibble as to whether that is financial sense or financial burden or financial level or what it is you are talking about. Financial sense seems to suggest there is lack of sense at the moment.

MR. ESTEY: Well, we think that there is; we think it would be commonsense if someone else would pay the bill to let someone else do so, if it does not hurt or harm national interest, and we say the custodian of that is Parliament, but in all the practicalities of Government Parliament has to delegate that to someone with certain standards, and we think an independent authority is the way to do it.

THE CHAIRMAN: Then, at page 36 you say:

"First, there has been an attempt to try and transplant European operating philosophies to North America without examining their validity to our geography and economy."

Now, you mention the Aird Commission and the Massey Commission; surely it is extravagant use of language to suggest that those two Commissions did not examine, to the extent they looked at European operating philosophies, did not examine their validity to our geography and economy. You may not agree with their conclusions, but how can you possibly say that there has been an attempt to try and transplant European philosophies to North America without examining their validity to our geography and economy?

MR. ESTEY: That remark is based on the Aird Commission at page 4, where we have one sentence which refers to the problem:

"We found broadcasting especially well organized in Great Britain under the British Broadcasting Corporation, and in Germany where the radio service is also under a form of public ownership, control and operation."

That was written in ---

MR. COYNE: That does not answer the question, Mr. Estey; you say they did not examine the validity of our geography and economy. Surely a large part of that report and a major premise upon which they based their conclusion is the geographic and economic situation facing Canada.

THE CHAIRMAN: I will read you another sentence from the Aird Commission report:

"At present the majority of programmes heard are from sources outside of Canada. It has been emphasized to us that the continued reception of these has a tendency to mould the minds of the young people in the home to ideals and opinions that are not Canadian. In a country of the vast geographical dimensions of Canada, broadcasting will undoubtedly become a great force in fostering a national spirit and interpreting national citizenship."

Now, how in heaven's name can you say "without examining their validity to our geography and economy"?

MR. ESTEY: Well, of course, what Mr. Chairman has read on page 6 is a circumstance existing in Canada; what I have read on page 4 is a solution to the problem which was used in Europe. We have read this very carefully and we say there is no reasoned connection between these two statements, and on page 4 ---

THE CHAIRMAN: Page 4 of what?

MR. ESTEY: The Aird Report which I read.

THE CHAIRMAN: I am talking about the sentence here in which you are accusing the Aird Commission and the Massey Commission of not having examined the validity of European operating philosophies to North America without examining their validity to our geography and economy. If there was one thing the Massey Commission certainly did, and the Aird Commission I think did, they looked at our geography and our economy and examined it.

MR. ESTEY: We do not make an accusation, we pass an observation, an observation based upon the reading of the literature which appears on the problem of broadcasting. We have read the Massey Commission and we have read the Aird Commission. They have made certain conclusive statements and we say they have not reasoned the facts to the conclusion.

MR. COYNE: You do not say that.

MR. ESTEY: There is no evidence that they were examined from that point.

THE CHAIRMAN: I have just read the part that they did examine.

MR. ESTEY: But there was no evidence of them finding a solution; they have jumped to a conclusion that state ownership is the answer.

THE CHAIRMAN: Because of our geography and economy as they saw it.

MR. ESTEY: I cannot draw that conclusion or make that observation; that is one observation and ours is another.

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THE CHAIRMAN: But it is an observation that you didn't examine.

MR. HENDERSON: Without examining their validity. They may have examined it but what we are saying there is what Mr. Estey says they didn't attempt to establish that State ownership was applicable here having regard to our geography and economy. That is what the sentence says. As Mr. Estey says there is no reason for the conclusion.

MR. ESTEY: There is no forewarning of the consequences of that approach. There is no illustration of what might come from that. There is no evidence of any other conclusion.

MR. COYNE: The Aird Commission examined the economy and geography of this country and emphasized the fact of the very spread out nature and the small numbers and the limited wealth in relation to other countries. They examined the existing state of broadcasting in Canada at the time of their deliberations and they came to the conclusion there should be State broadcasting. I don't see how any reasonable person in reading that report can come to any other conclusion. You may disagree with their conclusion but certainly they examined the geography and the economy of this country.

MR. HENDERSON: We are not saying for the moment they didn't examine that, we are saying nowhere in that report is there an examination of

the validity. There is no bridge between the observations in Europe and in Canada. There is no distinction of the adequacy of the European solution and in the case of Germany there were consequences which I think should have been reasoned out.

MR. COYNE: Then let me turn to page 38 if I may, section 8. You say there, it is therefore submitted that one of the justifications for this step being the alleged inadequacy of private enterprise to properly service the nation's broadcasting needs was brought about by artificial suppression of the natural development of this new art and by transplanting to North America a European solution not consistent with the realities of our geography and economy. And I take it, what you are saying there, our present broadcasting structure is a European solution not consistent with the realities of our geography and economy. Is that correct?

MR. ESTEY: No, it is not, because we didn't actually carry out the solutions of this Commission and Parliament intervened.

MR. COYNE: You are not only talking about the Aird Commission on the previous page but also about the Massey Commission and all the Parliamentary committees from 1928 until today and in the light of that can you point out any European country that has a broadcasting system similar to ours?

MR. HENDERSON: You are talking about the Aird Commission.

MR. COYNE: And the Massey Commission and the Parliamentary committees.

MR. HENDERSON: The recommendation made by the Aird Commission was not carried out but if the recommendation of the Aird Commission had been carried out it would have been undoubtedly a State structure such as the BBC.

MR. COYNE: That is true.

MR. HENDERSON: And that is what we said.

MR. ESTEY: The whole sense is lost by the portion you did not read and it would throw the whole thing into its proper proportion. It is against this background and the advent of a very serious economic collapse that the State launched its venture into Canadian broadcasting.

MR. COYNE: It didn't launch its venture in the manner proposed by the Aird Commission.

MR. ESTEY: That is right.

MR. COYNE: So you are suggesting our present structure of broadcasting, if you like, is a European solution.

MR. ESTEY: Within the limits of the Government economy at the time they went into the field of broadcasting.

MR. COYNE: My question was directed towards the solution.

MR. ESTEY: The solution we have today is the result of a long rolling process and there has been brought into it a lot of circumstances which were not in existence in 1932 and now we have a mixture of accident and design.

MR. COYNE: Perhaps you would call it a Canadian process.

MR. ESTEY: Well, it is in Canada.

THE CHAIRMAN: Page 37 you say the general North American attitude was that all channels should be aggressively developed and that any difficulties ensuing would be solved by the advance of technology. You have one word too many there, shouldn't you take north out and say the American attitude?

MR. ESTEY: No, I cannot agree with that.

THE CHAIRMAN: Was this a Canadian attitude at all?

MR. ESTEY: Out of 250 million people in North America, Mexico, Cuba, and the United States, the portion we have here, about 15 million didn't go along with that so I don't think it is unfair to say North American.

THE CHAIRMAN: All I am saying is then that you are not saying it was the attitude in Canada? I thought you were reading it as if there was this attitude in Canada.

MR. ESTEY: No, we are saying out of 250 million the general attitude was --

THE CHAIRMAN: Mr. Coyne, were you going to ask some questions about page 39?

MR. COYNE: Oh yes, just the figure right at the bottom of the page. It employs approximately 13,000 people and represents a very substantial investment of Canadian capital amounting in all to approximately \$44 million. Could you tell us where that figure comes from or where it might be available or how it might be worked out?

MR. ESTEY: That was worked out by this association from the statements of the various members.

MR. COYNE: I am not asking you to present it.

MR. ESTEY: We would like to.

MR. COYNE: Could it be made available to the Commission in private for study by our financial advisers?

MR. ESTEY: I am sure it can, yes. This is the result of the financial statements of which the association gets copies. But I am sure we can set it out so you can analyze it.

MR. COYNE: Actually, as you know, nearly all the private stations have consented to make available to us, through the Department of Transport, the returns that are made through that department but it might be helpful if we could check these computations against the computations in the other information.

MR. HENDERSON: Just talking back and forth, I don't think we consented, we offered.

MR. COYNE: I will accept that.

MR. ESTEY: What you want is how we arrive at the \$44 million.

THE CHAIRMAN: What we really want is to have our accountant check this figure to see how it is made up and what goes into it and to have your basic material that goes with it to have the figure checked into. We won't do it here and we won't do it individually publicly, but we want to arrive at whether or not you are correct in stating that your capital investment amounts to approximately \$44.

MR. HENDERSON: Certainly, we will show you the basis on which this figure was concluded so you can check our auditors' figures.

THE CHAIRMAN: That is right, and that is something we won't go into in a public hearing.

MR. deGRANDPRE: While you are on this question of public finance may I refer to Supplement 17, Exhibit 313, page 8, section (1).

MR. HENDERSON: Yes, we have it.

MR. deGRANDPRE: The first paragraph of which reads: nor are the Corporation's true costs apparent even so. It is likely that the cost of maintaining its buildings is paid by the Department of Public Works which is general Federal government practice, and this item does not show in the Corporation's accounts.

Could you tell us on what kind of information you have made that statement because our information is that, in fact, the CBC does pay rent to the Department of Public Works and also pays rent to the International Service for the Radio Canada building in Montreal. You have a further statement a little further down below. The third paragraph.

MR. HENDERSON: The very nature of the wording used would indicate the statement is not based on knowledge but it is a suggestion for the Commission to check into because we say it is like that -- we are not making it as a statement of fact but we merely put it to you for the purpose of being checked. If the fact is different the fact is different.

MR. deGRANDPRE: The third paragraph, you got a little further, and you don't say it is likely. You say, capital and operating costs of the Radio Canada building in Montreal are so split between the domestic and international services that no clear picture is available.

MR. HENDERSON: That is another point, it doesn't relate to Public Works at all. Oh, I am sorry, it says the costs of the one building, yes.

MR. COYNE: Just on that first point, Mr. Henderson, you say it is likely that the cost of maintaining its buildings is paid by the

Department of Public Works which is general Federal Government practice. I grant you it is general Federal practice for Federal buildings but on the question of whether it is general public practice for Crown corporations -- it is certainly not true for the CNR and other Crown corporations.

MR. ESTEY: I might tell you where it came from and you will see how we are pushing it and it was not too far away. We turned over the available CBC accounts to auditors who are accustomed to government auditing and these are the comments which they had from that how the rent and those things are accounted for.

MR. deGRANDPRE: It is just a suggestion that we should go into this matter?

MR. ESTEY: That is right.

MR. HENDERSON: That is right, and the suggestion being from the auditor who looked at it from our point of view.

THE CHAIRMAN: You have got to page 41 Mr. Estey.

MR. ESTEY: Yes, Mr. Chairman, what follows after that is a matter, and I must apologize as I have narrated on it at length from time to time, not actually narrated -- but in this we have said what the future should be and we have a section on page 42 on the future. I would be glad to read that if the Chairman wishes, but I think it would be wasteful of the Commission's time as I have already read many of the portions

in answering questions. And that takes us to the end which is really a plea for the future to recognize our place in the broadcasting sun.

THE CHAIRMAN: You are saying, in fact, you have covered the points you were seeking without reading it.

MR. ESTEY: Yes, I don't want to repeat our original plea, I would rather leave it on the general tone and I will say it again.

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We ask for only two things: one, the independent authority to regulate the field of broadcasting in the public interest of Canada as it from time to time prevails; secondly, we want competitive television licensing across Canada, and by that we mean competitive in the areas now occupied by private broadcasting and those occupied by public broadcasting. We have come to these conclusions from two slightly different roads of reasoning: firstly, we say we are in competition with the Corporation. We are not saying that is unfair competition as such, and we don't want to appear to be always trying to beat the Corporation over the head in order to make our point. We merely say we are in competition with them and, therefore, we don't think it is good policy for Canada, it is not in the public interest, that they should regulate us as competitors. From the other point of view we arrive at the same conclusion, namely, that in 1956 there is a new atmosphere, a new age, and we think the interests of the nation are best served by combining the present broadcasting resources in a different way from that which the statute now permits, and we think our place in the sun should be recognized, and the way to do it is by establishing an independent tribunal and centralize in that tribunal all aspects of the telecommunications, including broadcasting. We say we will get from that a

better administration of broadcasting internally and a more equitable regulation, and we will create the atmosphere which will allow the private broadcasting industry and the electronics industry to grow and roll forward in the community like our other industries, and in the process the taxpayer will be saved a great deal of money. Externally we say the effective voice of Canada will be unified and there will be no suggestion -- to raise it to the highest point -- no suggestion that anything but the overall national interest will be in the minds of those in the industry, both private and public. We go no further than that. In the battles and debates unquestionably both sides, if there are two sides, have in the days gone by, including before this Commission, made statements on unrelated or irrelevant fronts which have been **inflammatory and excessive** -- unnecessary, perhaps, even if right. We ask this Royal Commission, therefore, to consider the narrower point.

THE CHAIRMAN: Who made these unnecessary and inflammatory statements?

MR. ESTEY: I have been going through the Parliamentary committees and it is clear in the past the issues for broadcasting have been fought on several fronts, but we are asking that the Commission examine the serious question which does not need to spread so far -- the issues don't need to be broadened out. Undoubtedly it is human nature to defend yourself on all

fronts, even though you are not in vital danger. There are a number of issues from page 22 on in our brief where we feel we have to say this is not true, because we feel it is true but the real germane statements are found in our Part I. What we really want is in Part I of our brief. We have taken issue with people who have said things which we don't think are true, but we recognize that is not going to decide the problem of this Royal Commission.

THE CHAIRMAN: Well, I think the way you have put it -- without indicating any agreement or disagreement -- is a moderate, rational way of doing it, but what do you suggest we ought to do with all these unnecessary and inflammatory statements in the latter part of this brief?

MR. ESTEY: The statements that I referred to -- and I was careful to say so -- are historical.

THE CHAIRMAN: No, I am talking about what is here.

MR. ESTEY: My remarks on "inflammatory" were with reference to the Parliamentary debates. In the brief there are a number of minor issues raised from time to time on which we felt we should express ourselves for the benefit of the Royal Commission. We are not saying it is essential.

THE CHAIRMAN: What I am really asking you is this: we are now getting to the point where we have to leaf through things for consideration and we have a great pile of papers,

and a large part of it came from your clients, and I just asked you what we are supposed to do with such things as we find at page 47 under 21:

"The vast majority of those who oppose our views are of the depression-minded, state-adoring collectivist school."

MR. HENDERSON: That is not essential to our case.

THE CHAIRMAN: But what is it doing there?

MR. HENDERSON: Well, Mr. Chairman, what Mr. Estey is saying now is that we stand or fall on Part I of this brief, and that is the position Mr. Estey is explaining to you now. These remaining parts, if you choose to ignore them, we say our case is not dependent on them and you may ignore them from the point of view of our deliberations. Our case is found in Part I.

THE CHAIRMAN: I get that point. I still would like any guidance as to whether we should ignore them, whether you place any weight on them, whether you rely on them at all or not?

MR. ESTEY: We are in the position now, if I may draw an analogy, of a judge addressing the jury. There were a number of things in evidence which were relevant; there were a number of things in evidence which if not denied would be taken as admitted, but when all of that has been done, and that process has been followed,

we come back to first principles, to the proposal, the justification for the proposal, our forecast of how it will work, all of which is in the first 21 pages of the brief. That is not to say that in fairness -- and I thought I made a very frank statement a moment ago -- that is not to be taken as weakness. I thought I was trying to be helpful by narrowing it down to this, and saying that this is our case, but I am not surrendering anything when I say that.

THE CHAIRMAN: Well, on page 48 I am confused about something up at the top where you say:

"We are bound in the web of a power-hungry Corporation more interested in empire-building than in programming."

And a little later, the very next paragraph, "What we do oppose is the binding of free broadcasting into a potato sack race with the State broadcasting agency...", and then you go on to say that you want to take the potato sacks off. Down at the bottom of the page you want to "burst out at the seams". Now, "bound in a web", "in a potato sack", and "wanting to burst out at the seams" -- all on one page.

MR. HENDERSON: Those who are part of this association believe that the present structure is depressive to them. That is all that says. It may say it in very picturesque language --

THE CHAIRMAN: Well all I can say is that your language is profoundly depressive to me.

MR. HENDERSON: That may be, Mr. Chairman, but the point is they feel, and they have expressed in this part of the brief, that they are not able to realize their full potential having regard to the present system. That is what they are saying, and they genuinely believe it. That it is expressed in strong language does not alter their belief in it.

THE CHAIRMAN: I don't share your expression that this is "strong language".

MR. HENDERSON: Well, if it is not strong language --

THE CHAIRMAN: I think it is foolish language.

MR. HENDERSON: Mr. Chairman, you are in the position of being able to judge whether it is or not, but we are only in the position of being able to present the position of those who believe in something. If you choose to accept it, that is from our point of view, fortunately or unfortunately, your privilege. Nevertheless, we are expressing here what we genuinely believe to be the feelings of those we represent.

THE CHAIRMAN: Let me ask you another minor question: on page 48 you say, "We have not expressed opposition to the Government's desire to continue some form of State broadcasting agency.

However undesirable such an arrangement may be, we frankly recognize that it is rare for Government to leave completely any field it has once entered." Do you, speaking on behalf of CARTB, feel it is an undesirable arrangement to have some form of State broadcasting agency in Canada?

MR. ESTEY: No, we can't be intellectually honest sir, and say that the concept on which private enterprise is founded generally has that general outlook, but almost every industry now has some facet of government intervention in some form or other, and so in broadcasting, like any other industry within the Federal jurisdiction there is going to be an element of State intervention.

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THE CHAIRMAN: You are saying in effect that being free enterprisers you would not think that this would be undesirable, but you are not saying that there should not be a CBC.

MR. ESTEY: No, that's right.

THE CHAIRMAN: Well, then, one other question which can arise from this, is on page 49 where you say "the forced marriage of private radio with CBC has been a confusing and unhappy arrangement". What are you seeking -- a divorce?

MR. HENDERSON: Well, I thought our position was clear. What we are seeking -- it is found in part 1 -- is a regulatory body. We want a regulatory body where we will have an opportunity to be heard -- that is what we are seeking.

THE CHAIRMAN: That is a legal separation?

MR. HENDERSON: Well, it is a separation if you like, under an agreement -- a separation agreement, and the agreement will be found in the statute creating the regulatory body and all the regulations of that body.

THE CHAIRMAN: But I am interested in finding out a few things, and sometimes one can draw some funny conclusions from words -- however, I don't think you are suggesting that there should be a divorce of the relationship between the CBC and the private broadcasters, are you?

MR. ESTEY: No, we are saying, as I have said before, that broadcasting is a mixture of science and art. I am afraid the tail end of this falls into the category of art but the cold blooded science is in part 1.

MR. COYNE: I have one or two questions Mr. Chairman, but I may say that I do not know whether they are of anything but very slight importance. Perhaps, however, I may just raise one of them with Mr. Estey, arising from page 45 in paragraph 12, where you say, and I assume that you mean the private broadcasting industry, that they have built up from nothing a major industry, responsible for a total present capital worth investment by stations and listeners of over \$830,000,000.00 , responsible directly or indirectly for annual expenditures of more than \$50,000,000.00 Now my only question is, do you claim that exclusively for yourselves or do you think the CBC can perhaps claim a little credit for the fact that 2,000,000 people in this country have bought television receivers.

MR. ESTEY: Oh I would be the first to agree with you, Mr. Coyne. That figure of fifty million is apparently representing something for which we are responsible but, the investment of the public in their equipment is something which no one can say they bought it because of the CBC or because of the local station or because of listening to the United

States -- I quite agree with you.

THE CHAIRMAN: I think there are one or two points I would like to raise with you. One question has to do with the future of radio and its relationship to television. I would like to know if you can give us any help on this. The sort of thing I am thinking of is this -- we have heard a lot about the impact of television on radio, moving the advertisers' dollars back, to some extent, to the daytime hours from the evening hours, mainly. Now have you anything to suggest as to whether the hours of TV broadcasting should be extended, when presumably, the process of encroachment on to radio would be even greater, or whether there should be some restrictions on the scope of further television broadcasting which would prevent to some extent this happening.

MR. ESTEY: Our answer to that is this that, and we have discussed this with a number of station owners, as many as were available over the last six months, everywhere where television has been developing the impact on radio has been more or less uniform. First of all, radio network as evening operations are becoming doubtful quantities, but I don't think you can go any further than to say that. Secondly, economies are now becoming necessary in radio network operations elsewhere and presumably in Canada. Fortunately, the technique

of tape recordings for use on radio may be a move towards saving in the operation of networks, so that the networks might be subject to the restriction that will only be activated for events which must be broadcast at the moment and simultaneously, as special events.

Radio itself apparently, and the stations, have experienced an extreme drop in revenue during the hours when television is widely used in the evening.

But it is not our view that the development of television should be curtailed because it affects something else. We think that these things all find their place in the normal push and pull of marketing and that television is something the people want in the daytime perhaps and that it will have another affect on radio if this is so. We don't think it should be artificially restrained because of radio.

THE CHAIRMAN: Well, that is a perfectly clear answer but the point is twofold really. First of all, its affect on radio and secondly what we have to recommend as future policy for television itself to the extent that the state operates the television stations and it may affect the operation of both private television stations and private radio stations.

We may wish to make some recommendations as to the scale of television operations

in the future. I mean in the sense, not of what would be restricted or would be artificially cutback but what ought to be the level and should it be about the present level or should it be higher, or longer hours or less?

MR. ESTEY: Our difficulty there again is the fact that the yardsticks change, the atmosphere changes and what would be a good rule today would undoubtedly not be a good rule five years from today. It would seem, therefore, that these things are not answerable in this sense but rather must be defined from time to time in the light of circumstances then prevailing. Secondly, where in countries there has been an attempt to regulate the actual hours of television for example, or to try to prevent television from disrupting the community instead of serving it, for instance, in Britain an effort was made and I think temporarily tried out, that they should not have television of a certain type while the children were still up, and that television should go not beyond certain hours and should be cut out during the meal hours -- in our submission these things should be allowed to find their own level and the hours of operation is a mixture of economics and changing public interest. We think that it should be an argument, or so it seems to us, for the continuing authority with power to shape the pattern from time to time.

THE CHAIRMAN: At any rate, you don't

feel that radio and its future should be a conditioning factor in the growth of television.

MR. ESTEY: No.

THE CHAIRMAN: Well, now, I have a series of queries here which fall from the general desire that you have expressed on the subject a moment ago -- we have to get to a point where we can start discarding some of these things that we don't have to consider in the matter of material that we have.

I think on Wednesday we got to a fairly clear cut proposal which you have made for the separate regulatory body and I think you said -- -- -- I just want to get your exact words here -- -- "there is no intention on the part of the Association to lessen the degree of public control over broadcasting" I think that is a fairly clear cut position which you reached on that subject as the situation is today.

However, we have quite a mass of exhibits which have been filed and which have been scarcely referred to and no conclusions have been drawn for us from them, we would like to know, therefore, what you suggest we should do with them.

I will give you the ones in order and you can tell us, unless you would like to make a general answer to that.

MR. ESTEY: I think I can make a general

answer to that. We have looked over the terms of reference of the Royal Commission and we have tried to decide what we, as broadcasters, think would be relevant to the considerations of this Royal Commission in answering those terms of reference.

There is a great deal of information which is relevant to broadcasting on those headings of the terms of reference, but it is not necessarily supporting either position (a), the independent authority, or (b), competitive television, but it is just background to understand the general aim in life of the broadcasting industry. Therefore, we submit that for the consideration of the Royal Commission but, so far as that material is essential to the case of the private broadcasters, we say it is to be found in the one place -- that is the first part of this brief. The rest is background information which we think will be helpful in understanding why we make these statements.

THE CHAIRMAN: Well, maybe it will, I don't know, but let us take for example Exhibit 19 and let us see whether you and I are talking about the same thing. Exhibit 19 which is a rather highly coloured article by Sir Thomas Beecham entitled "Marxist Music -- some dangerous illusions." It seems to be saying that a national consciousness in music is a delusion and is rather undesirable. Applied to this country I take it it would mean that the development of Canadian

musical competition is not something we should try to encourage.

Now I would like to know if that is the kind of viewpoint that the CARTB has . Do you think that we should have Canadian music written by Canadians and fostered and aided by Canadians?

MR. ESTEY: Yes, that of course has been the subject of CARTB participation in some events, along with BMI and I think that this illustrates our position.

THE CHAIRMAN: But what is the point of burdening the records with this exhibit -- it is not background at all as far as broadcasting is concerned.

MR. ESTEY: Well it is a question of whether the private broadcasters are in fact bearing in mind the national interest and the public interest in Canadian content and so on -- I think that is the point.

THE CHAIRMAN: Well no, but the whole trend of the article is designed it seems to me, to suggest this notion of a national consciousness in music is a delusion.

MR. ESTEY: Well, in all subjects one needs a balance and in the question of promoting Canadian art, culture, talent and so on, this field, of course, has its limitations and we think that when someone is putting forward a case for Canadianism that there should be an element of reality in it -- that is all.

THE CHAIRMAN: Well, it would be the easiest thing for us to say with respect to those documents which you have not referred to, that we are going to ignore them and maybe he would like us to do that -- I don't know.

MR. ESTEY: Well I think that you can limit yourself to the first part and the second part of the brief.

THE CHAIRMAN: Well, we have got to the point or we will have to, sooner or later, when we will have to do that.

But with respect to Exhibit 21 an article on the Press Gallery in Westminster it says, I think the statement is, that radio should be kept free from discretionary Government control. Well now that is directly opposite to what you have said.

MR. ESTEY : Well if I may give personal opinion on that, Mr. Chairman, I would say that the Royal Commission could ignore all these things, because the Commissioners are certainly aware of these things - as much as anyone else.

THE CHAIRMAN : Yes, but I cannot help wishing you hadn't burdened us down with all these things and reading material - we have got quite enough to do now.

MR. ESTEY : Well that is what was behind the move we made here in the last two days to cut away part of the argument and get down to case histories.

We left out a great deal today.

THE CHAIRMAN: Well, now let us take exhibit 31 which you filed today -- should we "ignore it"-- you haven't referred to that either. It is headed "Control of broadcasting - an urgent Canadian problem" -- that is obviously a statement directed to the general Canadian public and here I think we have got into something which is in your document and which is contrary to your present recommendation. I refer to one section which I mentioned before, on the first page you say -- where there is A, B and C, the various recommendations, -- that this will involve the discontinuance of presently existing discretionary governmental political control of non-government owned broadcasters. Now you obviously don't mean that according to what you have now said. Is this to be withdrawn?

MR. ESTEY : Oh no sir - no. As with almost every other statement I suppose one can make on a broad issue, it is capable of all kinds of reading. The way I read it, and the way we read it, is that it is a discontinuance of the presently existing discretionary governmental political control of non-government owned broadcasts. Now, what we have in mind there, is that we should get down to the rule of law and not the rule of man and it should be on a basis which jurisprudence can define.

THE CHAIRMAN : But you say and you said this morning that you weren't going to have the present control watered down and the other day you said there is no intention on the part of the association to lessen the degree of public control

over broadcasting, Here you are saying
there should be a discontinuance of the
existing discretionary governmental political
control.

MR. HENDERSON : Presently.

MR. ESTEY : This is an illustration.

MR. HENDERSON : Of the presently existing
control and discretionary - as I would contemplate
that - would mean as it exists in its present form.

THE CHAIRMAN: You are advocating discontinuance?

MR. HENDERSON: Not of control, but in the form it is now.

THE CHAIRMAN: In other words, you want to discontinue the present form of control but if you read it ---

MR. HENDERSON: You can read it two ways, but certainly our intent is the present structure.

MR. ESTEY: It could be read as discontinuance of control of broadcasting, I can see that now.

THE CHAIRMAN: Of non-government controlled broadcast.

MR. ESTEY: The next sentence covers that.

THE CHAIRMAN: Well, then, another one that you filed this week is Exhibit No. 308, which is "Freedom of the Air" from the Calgary Herald, and this is a series of editorials and articles in the Calgary Herald, and a good deal of it deals with matters beyond our Terms of Reference. You say at page 12 of this filed exhibit:

"Television in Canada will have to be under some kind of control, all right, but not CBC control. It must be the same kind of control which should be exercised over radio -- control for purely technical reasons. It should be control by an independent board, similar to the Board of Transport Commissioners; a board which would

allocate frequencies in the case of radio and air channels in the case of television. And that, roughly, is all the formal control it should exercise."

That is not part of your case?

MR. ESTEY: No, we do not control the Calgary Herald; this was circulated by this Association a long time ago and it is put in now because we have been identified with it. We think it did not go far enough in the definition of how it should be done.

THE CHAIRMAN: You do not control The Calgary Herald but you do control the exhibits you put into us, so now what do we do?

MR. ESTEY: Well, it is not germane to the real problem, it is not a direct, inherent part of our case.

THE CHAIRMAN: Well, then, I would like to come to the question of American influences on Canadian thoughts, on Canadian aspirations, the question of developing a definite Canadian culture in the best sense of that word and the possible contribution broadcasting can make to that. Now, do these ideas have any significance at all for CARTB in this matter?

MR. ESTEY: Oh, yes.

THE CHAIRMAN: There is very little in the mass of filed material.

MR. ESTEY: We, perhaps mistakenly, and always have presumed -- we do not distinguish

between Canadians; Canadians in the CBC or in private radio are as good or as bad Canadians as anybody else. I suppose the theatre managers are as good Canadians as anybody else even though we do not agree with the motion pictures they are distributing, but broadcasting like the press has its obligations to Canada, and we are not seeking to get out from under the responsibility any more than our press is.

THE CHAIRMAN: What I am really asking you is, do you think there is in fact a problem here for a relatively small country beside a large, rich, friendly, powerful neighbour?

MR. ESTEY: Yes, the same problem that we have in developing our resources; we could not leave things to someone. Having a problem, provincially, nationally or internationally, we always have trouble with neighbours. Now, that is true in broadcasting, in magazines, in politics, I suppose even in law, but whether broadcasting should be singled out as the instrument to insulate us is another matter.

THE CHAIRMAN: Well, the point I was really directing this to, Exhibit 314, which is an article written by Dr. Marcus Long -- I take it the CARTB commissioned this from Dr. Long, did they?

MR. ESTEY: I am instructed we did.

THE CHAIRMAN: And you paid him for it, I presume?

MR. ESTEY: I do not think that; we could assume that we will -- let us assume we will.

THE CHAIRMAN: Well, the views expressed by Dr. Long are accepted by the CARTB; is this their view of the question of the relationship between Canada and the United States in the broadcasting field?

MR. ESTEY: That article as I read it is designed to reply to or offset conclusions, and it is always difficult in any context in any report in published form to put in reply or positive statements. There is, it seems to us, speaking positively, a need for development of Canadian character, and we think that as private citizens as much as private broadcasters. On the other hand, in the world of politics and circumstance in 1956 there are a lot of influences Canada must keep its guard up against, therefore, we say we want to maintain a sense of proportion; we have other things to fear and to look out for without saying there is no American influence we should fear. This puts it back in perspective.

THE CHAIRMAN: I have read it a couple of times with care, and it seems to me that your present statement is much more balanced than anything in this article. I am really asking you again, what do we do with this article? It is an extraordinary way to put in a brief, to put in a submission to a Royal Commission, to come in with a great basketful of articles with clippings from some other place, and I want to know what you want us to do with this. If this is your belief, what Dr. Long says, then we will take it that that

is the CARTB belief, or if you are trying to just try and amuse us -- because really it is a very sprightly written article -- that would be another question.

MR. ESTEY: Well, we are faced in this and many other inquiries with a number of approaches which are not entirely friendly, and in this case this is a reply to an article as a submission by another man from the educational world from which we have had a number of extravagant statements, extremely extravagant statements. Now, the other view should be expressed and as a matter of good public interest and balance, in our submission I think we have to show that that statement to which this is replying is not a balanced statement.

THE CHAIRMAN: Oh, but the statement that was made today you are replying to. While it was the Canadian Radio Television you are answering, Professor Lower had a brief which is almost the same, and he came before us, he stood up to be questioned.

MR. ESTEY: Well, certainly Dr. Long would be glad to.

THE CHAIRMAN: He gave his case and submitted to examination, and you have not bothered to refer to this.

MR. ESTEY: We can certainly have him come and support this or come and read it to the Commission, and we would be glad to make that arrangement.

THE CHAIRMAN: But he had plenty of

opportunity to make a presentation to us if he wanted to.

MR. ESTEY: Our problem is, how much time can we take up? Perhaps we should have Dr. Long read that, and he would be glad to.

THE CHAIRMAN: Well, we can read it ourselves. Coming to the basic question of this matter, am I right in thinking that the private broadcasters do go along with the notion that some action through the State and through the efforts of private broadcasters too is desirable in this country for the creation of a Canadian consciousness for the building up of a Canadian identity for the preservation of the Canadian nation?

MR. ESTEY: Very much so, and that is the basis of our argument for channel utilization to the ultimate degree possible, if for no other reason than to reduce American penetration as we have done in radio.

THE CHAIRMAN: Well, if these things mattered to the private broadcasters I would have hoped there would have been more documents that they would file because we are only getting this statement now.

MR. ESTEY: Well, I think, taking Document No. 7, I think that sets out a great deal of the work which has been done and is being done and we hope will be done in the future by the private broadcasting industry. In Supplement No. 7 there are about thirty pages of illustration.

THE CHAIRMAN: Well, that is talking

mainly about the community service activities and that is not quite what I am referring to at the moment.

MR. ESTEY: Well, it is a little more, I think, than that; we talk of exporting programmes to show the Canadian way of life and ---

THE CHAIRMAN: Yes, that is perfectly right, you did mention that too, but I had forgotten.

MR. ESTEY: It is a very difficult subject, as I am sure you will agree. It seems to be one of the worst things that one can do in a case such as this is to get up and be a flag waver, and we get up and talk about how good we are and what great Canadians we are and we are wide, wide open, because you say, "Well, you are getting paid for it", all of which is true. To avoid getting slapped down by the various weapons we have refrained deliberately as lawyers from getting up and waving the flag, but, believe me, if someone wants flag waving we have lots of factual material we can lay out on Canadianism. We have made the positive statement that one of the difficulties in Canada today is that we have not stood up for our rights on the basic technological front and screamed out a great deal.

THE CHAIRMAN: I confess to you now that until your statement here I had not been sufficiently conscious of the fact that to the private broadcaster the question of Canadian nationhood and Canadian identity and building up through radio and television had been a matter

of concern to you at all. You have stated it as being so and I hope it is so, but certainly from reading an article like Dr. Long's it does seem to pooh-pooh the whole suggestion of the fear of American infiltration. I might say that I have been in touch with some thoughtful Americans who are concerned with it from their point of view; they do not want to take us over at all.

MR. ESTEY: I am sure they do not except for one representative from Chicago who thinks they already have. But how do we attack the problem, if we come and say what great fellows we are and we are more patriotic than the other fellow -- you cannot prove that kind of thing; at least I do not think you can.

THE CHAIRMAN: I suppose one way of attacking the problem would be through programming; that is one thing that might be useful, and you mention some of that in Supplement No. 7.

MR. ESTEY: The citizenship course and New Canadian programmes, lots of broadcasting in the native language of new Canadians to interest them in Canada, and through that build them up as Canadian citizens. But that is a difficult thing to say, and we would always be open to challenge, "Well, you say so, prove it".

MR. HENDERSON: After all, there have been observations made by the Commission in its visits throughout Canada, and we had hoped some of the things we have done would speak for themselves.

THE CHAIRMAN: Yes, Speaking for myself you have undoubtedly made a very impressive case on the subject of local and community service. On the question of national services you are much less clear. Then let us move a little further to the subject of using local live talent. In Exhibit 17 which you filed last Spring, that is the brief that the Gordon Commission put in, on page 3 you say that in 1955 the stations, the private stations originated more than 105,000 local live programmes in addition to their programme productions. These local live originations represented a total talent expenditure of more than \$2 million. Now, at first sight that looks like rather an impressive picture but being an old mathematician I divided 105,000 into \$2 million and it ends up at an average cost of local live talent on private stations of \$20 a programme. Now what kind of a programme can you buy for \$20 of local live talent?

MR. ESTEY: It depended on how long it lasted but to tell you the truth there are a lot of sportscast programmes that are live and local. We come back there, Mr. Chairman, to one of our basic weaknesses as a system which sometimes we have been described as being. The whole of the cost being charged off against the one programme of a local station it is a very great limiting factor. A factor which is hurting the development

of Canadian talent. Now, there is another factor operating through NABET, union regulations are that we pay double rates if you record the thing for future use. There is another limiting factor that doesn't apply to the network. You pay one rate for the network and if you record it you pay double. Those two factors are against the development of Canadian talent and the musicians union rule about recording fees -- those are the things that militate against the development of Canadian talent. Canadian private stations located all over the place, in a great many places, and in a great many small communities, are not in the big entertainment markets as is the CBC, which is another factor but until the private stations are operating networks and making their full-scale contribution it is very difficult and, perhaps, unfair to analyze their activities, and say these are these and those are those in what proportion.

THE CHAIRMAN: I was only raising that to give you the opportunity to say anything you like about your services in providing local live talent that you have done and you are suggesting the disability that exists. Then, this naturally leads on to one other question which is somewhat difficult for me to ask and I think even more difficult for you to deal with, but I want to give you, at least, the opportunity to do it and explain the facts as you see them. You know our

financial consultants are making detailed studies of CBC finances and they are also making studies of the financial results of the private broadcasters mainly based on your own return to the Department of Transport. Now, it may well be in our report we will decide to deal with those results in our report. Probably in overall figures. We certainly don't want to get into disclosing any figures, if we can avoid it. But since we may do so, I don't want to close this off without giving you every opportunity to make any comments on this subject that you may wish as to how you have done financially under the existing system, what sort of return you have had, your percentage in sales, percentage in net worth, anything you would like to give us. What I am really trying to do, if we do decide to give this out in our report, I don't want you to come along later and say, "We had no idea you were doing this and we had no opportunity to speak".

MR. ESTEY: I very much appreciate that because one of the things that really frustrates a lawyer is to have judgment come down on a point he wasn't asked to discuss. If there is any financial information required, or financial statements wanted from private stations, we will get them. If we can be of assistance in analyzing those statements and coming to a conclusion on a number of questions, we would be glad to give that

assistance. There is no facet of information we are not prepared to come forward and give. The only limitation -- you know we are an association of competitors, therefore a lot of the information which the Commission requires will go into the Commission from 110 different sources because they won't tell each other what they are doing.

THE CHAIRMAN: Actually, I think we can understand that clearly, and we don't want to put you into a position of having to pass on individual figures at all. I don't know that it will be even necessary to come back at all on this because figures are fairly simple and we do get figures on gross revenue from sales of private stations. We do get figures on net revenue from sales and we do get figures of overall profit before taxes and we can easily make that comparison of sales. Now, is there any comment there at all that you want to make. I want you to be free to make it.

MR. ESTEY: I want to say yes as the first part of my answer and to the second, perhaps a broader answer. Broadcasting started about 1922 and struggled along until 1930 and then was set back, as was the whole economy during the thirties, and during that time some hardy souls persevered in private broadcasting. From the beginning of the war onwards broadcasting came on and it has gone on ever since and the people in it have begun to share in the prosperity of the community. What we are saying is the return --

that the return that the broadcaster has recovered in the past few years, which have been years of unprecedented prosperity, in proportion to the community. The success of some broadcasters has been greater than others. The failure of some is running along the lines of business generally. What we hope is that the Commission will conclude from this analysis of our accounts is that the success or failure of a broadcaster is not far removed from the fate of similar people in similar industries or other industries. But also, the need for private broadcasting in the community and the discharge by the private broadcaster of the need is dependent upon profits and if profits are unduly curtailed it will be the public who will suffer. It is true, it will be the private broadcaster who will suffer because he may have to get out of the industry but the public who are listening to and looking at the private stations now, and if you are to artificially depress the income of those private stations, it will mean the public will be deprived. Healthy broadcasting can serve the community better than a sick industry so when one considers the profit return to a private broadcaster they should bear in mind a reasonable return will ensure his service to the community. I don't think the public would be served by having conditions established wherein the private broadcaster would just be able to struggle along. The bankruptcy of private broadcasting would not enhance the public service.

Those comments are just general but nevertheless --

THE CHAIRMAN: The thing is completely not unrelated to the subject we were dealing with a moment ago, namely the condition of Canadian programmes. Looking at the financial returns, let us say they turn out good, then the argument that you haven't got network and, therefore, cannot distribute across, may lose some of its weight. In other words, you cannot argue or maybe you can argue, but you cannot do as much programming as you would like but there is a degree to which there can be production of a lot of local live programmes. That is, if the money is there, without bankruptcy.

MR. ESTEY: Yes. Something came out of yesterday which I wanted to mention and that is by increasing the stature of the private broadcaster you don't necessarily increase his profit. That is, by extending the listener coverage of a station to cover a more rural area you don't necessarily raise the private station on the profit and loss sheet. So the private broadcaster might make less money if he were on a bigger scale than he makes now because he doesn't incur overhead which he would have to incur if he were to take on a greater service. This has been put on networks, and if networks are not a good financial investment it follows, and that has been suggested by the analysis of industrial operations, it follows by

shouldering that network responsibility they are risking some of their return that they are receiving on a more or less cosy basis of reasonable assurance. And without knowing where they are at we are asking them to take on a bigger share of that responsibility and risk. On the question of financial return, electronic equipment is expensive and for the operator in a small centre, he is taking a pretty big risk, and in any other field the man who takes the big risk is entitled to a fair return averaging on a big return depending on the risk and we think that factor should be in broadcasting as it is in any comparable field. I am not suggesting we are in the mining field, where you are entitled to anything you can get, because there is a public interest here.

THE CHAIRMAN: I don't propose to go into it but just in case you have forgotten it, there is submission 19, dealt with by Mr. Wismer of the Canadian Labour Congress and I am taking it you don't wish to go into it at all.

MR. ESTEY: No. We generally view this thing with some alarm. We don't like to take on segments of the community to sell our point. There were some things in there which we think are helpful and of value to the Royal Commission in the way of statements made. The private broadcaster has no issue with labour.

We are trying to show we are right. We cannot make anyone say we are right and it may be we are over-zealous in pounding away at the separate regulatory body, but that is what we are trying to do.

THE CHAIRMAN: Now, Mr. Henderson, Mr. Estey, and Mr. Lynds and anyone else in your group, are there any other points at all you would like to make with us. Any other documents you would like to refer to or any opportunity you want in this rebuttal because, as far as we are concerned, we have reached the end of our questioning unless you start us off again.

MR. HENDERSON: I would like to say this, I believe that the Commission appreciates that Mr. Estey and I have been trying to consolidate in a very short period of time the views of 140 members of whom a great many have diverse interests and who have been in this field for many years and who probably have developed old problems and old difficulties over a period of time. I want to say in what we have said we are not expressing any animosity towards anyone. We have sought to bring our views or the views of that group to the Commission in a spirit of helpfulness. We feel that since industry is opening up into a brand new era we would like to play as full a part in the development of and the enjoyment by the Canadian people in their

cultural development as a regulatory board would permit if, in your wisdom, you see fit to grant that and I would like to express my appreciation and the appreciation of all of us for the opportunity that has been afforded us to give as complete and as full a story to the Royal Commission as time permits. I do think we have had the full benefits, at least we have not been restricted in time and we appreciate the very full opportunity for presenting our views. I would make this last comment. We feel it has been demonstrated that truth is developed through full debate and we think that is the only way in which truth can be obtained, by the full weighing of ideas through discussion and debate. We welcome the opportunity to have been before you in that atmosphere, in the atmosphere of debate and discussion.

THE CHAIRMAN: I hope no one will accuse me of bias if I tell you in our view and opinion that you, Mr. Henderson, and Mr. Estey have done a remarkably good job in consolidating the brief and presenting it to us and we congratulate you on it.

I don't think we will start the CBC rebuttal at this late hour of the week. We will resume at 10.30 a.m. Tuesday, if that is satisfactory and we will adjourn now until then.

---The Commission adjourned at 4 p.m. until Tuesday, October 9th at 10.30 a.m.

